

Notary Public


NOTICE OF DECISION
ON APPLICATION TO DRAIN NO. 5254
NELSON COUNTY ROAD 22 DRAIN PROJECT

TAKE NOTICE that Application to Drain No. 5254, submitted by the Nelson County Commission for the Nelson County Road 22 Drain, was conditionally approved by the State Engineer on December 21, 2021. The project consists of construction of approximately 11,000 linear feet of drain including 6,000 linear feet of 18-inch diameter pipe to lower the surface water around Nelson County Road 22 by approximately 1-foot. The project will discharge into a likely watercourse that drains into Stump Lake located in Northeast 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County.

The State Engineer's decision may be viewed at the Department of Water Resources (DWR), 900 East Boulevard Ave., Bismarck, ND 58505 or on the DWR's website at www.dwr.nd.gov. A copy may also be requested by writing to the above address or by emailing dwrregpermits@nd.gov.

A hearing may be requested within thirty days of the date of service of the State Engineer's decision. A valid request for a hearing must be received in writing by January 27, 2022; must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the State Engineer's decision; and must state what material facts or conclusions are believed to be erroneous and why they are believed to be erroneous (North Dakota Administrative Code § 89-02-01-09.6).

Dated December 28, 2021.



John Paczkowski, P.E.
North Dakota State Engineer

APPENDIX A – PARTIES OF RECORD

Ben Varnson, Chairman
Nelson County Water
Resource District
P.O. Box 446
Lakota, ND 58344-0446

Charlene Varnson, Secretary
Nelson County Water
Resource District
P.O. Box 446
Lakota, ND 58344-0446

Devils Lake Joint
Water Resource District
524 4th Avenue, #27
Devils Lake, ND 58301

Ramsey County
Water Resource District
524 4th Avenue NE Suite 12
Devils Lake, ND 58301

Kenneth Reis
Eddy County
Water Resource District
1380 68th Avenue NE
New Rockford, ND 58356

Lucia Jacobsen, Secretary
Benson County
Water Resource District
P.O. Box 347
Minnewaukan, ND 58351-0347

Nelson County Commission
C/O Nancy Marquart
210 B Avenue W, Ste 301
Lakota, ND 58344

Nelson County Auditor
210 B Avenue W, Ste 301
Lakota, ND 58344

Benson County Auditor
P.O. Box 206
Minnewaukan, ND 58351

Eddy County Auditor
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Devils Lake, ND 58301

Nelson County Highway Department
P.O. Box 407
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3009 104th Avenue NE
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Devils Lake, ND 58301

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North Dakota Game and Fish Dept.
100 North Bismarck Expressway
Bismarck, ND 58501-5095

NDDOT
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Andrea Travnicek
Director, North Dakota Department of
Water Resources
900 East Boulevard Avenue
Bismarck, ND 58505

John Paczkowski
North Dakota State Engineer
900 East Boulevard Avenue
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APPENDIX A – PARTIES OF RECORD

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December 28, 2021

Ms. Nancy Marquart, Chairman
Nelson County Commission
210 B Avenue W, Ste 301
Lakota, ND 58344

Mr. Ben Varnson, Chairman
Nelson County Water Resource District
P.O. Box 446
Lakota, ND 58344-0446

RE: Surface Drain Permit Application No. 5254

Dear Ms. Marquart, Mr. Varnson:

The Department of Water Resources¹ (DWR) has reviewed Surface Drain No. 5254 (Application), submitted by the Nelson County Commission for a proposed surface drain. The surface drain is located within the West 1/2 of Section 16, North 1/2 of Section 20, and the NE 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County.

The DWR has conditionally approved Surface Drain Permit No. 5254 (see Notice of Decision including permit, permit conditions, and interoffice memo enclosed).

Given the volume of records regarding this Application, the permit record, including the DWR's interoffice memo exhibits, has been made available on the DWR website's homepage: dwr.nd.gov.

Please contact me at 701-328-3442 or joemorrisette@nd.gov if you have any questions concerning this correspondence.

Sincerely,



Joe Morrisette
Water Resource Engineer

JM/1131

Enclosures

Cc: Parties of Record

¹ The North Dakota Office of the State Engineer, as a codified regulatory entity, was repealed and replaced with the Department of Water Resources on August 1, 2021, via House Bill 1353 of the 67th Legislative Assembly.

TECHNICAL MEMORANDUM

DATE: December 17, 2021

TO: Andrea Travnicek, Ph.D. Director
John Paczkowski, P.E., State Engineer

FROM: Aaron Carranza, P.E., Regulatory Division Director
Matt Lindsay, P.E., Engineering and Permitting Section Manager
Joe Morrisette, Water Resource Engineer

SUBJECT: **Application for Surface Drain No. 5254 – County Road 22 Drain**

The Department of Water Resources (DWR) received the following surface drain application:

Application Number: 5254

Application Received Date: December 10, 2018

Applicant: Nelson County Commission

Project Location: W 1/2 of Section 16, NE 1/4 of Section 19, N 1/2 of Section 20, Township 152 North, Range 59 West, Williams Township, Nelson County

New Drain Construction or Modification to Existing Drain: Modification to Existing Drain

Purpose of Drainage: Flood Relief, Protect Structural Integrity of Nelson County Road 22

Feature to be Drained: Pond, Slough, Lake, or Any Series Thereof, Road Right-of-Way of Nelson County Road 22

PROJECT BACKGROUND

The Application was submitted by the Nelson County Commission for a drain project intended to alleviate flooding effects to Nelson County Road 22. Specifically, the project proposes modification to the existing drain by rerouting the natural outlet to the sloughs along Nelson County Road 22 within Sections 16, 17, 19, 20, and 21 of Williams Township. The length of the proposed drain is 11,000 linear feet with a proposed maximum cut of 5.5 feet, side slopes of 4:1, and a 3-foot bottom width. The proposed drain will include two sections of 18-inch pipe totaling 6,000 linear feet. It has been determined that the last section of 18-inch pipe will have an inlet elevation of 1515.20 feet (NAVD 88), which is based on a May 2020 KLJ survey of the natural outlet of the slough (see DWR Exhibit 1). The project will discharge into what appears to be a natural watercourse that is part of the Stump Lake Basin. The project was necessitated by the Applicant's inability to gain property access to maintain the natural outlet location of the sloughs, which is located in approximately in the center of the SE ¼ of Section 17 (Williams Township).

To date, the Application review has included the following:

1. On December 10, 2018, the Applicant submitted Surface Drain Application No. 5254 to the DWR.
2. Upon review, the DWR issued a determination on September 6, 2019, that the proposed project under the Application is drainage of statewide or interdistrict significance. The Application was forwarded to the Nelson County Water Resource District (District) for processing.
3. On November 19, 2019 the District held a public hearing regarding the Application.
4. On December 19, 2019, the District issued their "Order Approving Application No. 5254 – County Road 22 Drain". The Application was subsequently sent back to the DWR for review and approval.

These review components will be discussed in further detail below.

DWR Statewide or Interdistrict Significance Review

The Application proposes a solution to relieve flooding and save the structural integrity of Nelson County Road 22. The project will discharge into a natural watercourse that is part of the Stump Lake Basin, which is a watershed within the Devils Lake Basin.

According to North Dakota Century Code (N.D.C.C) § 61-32-03, a permit to drain is required "draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising of eighty acres or more". Upon review of the Application, the DWR determined that the proposed Application would drain a watershed area exceeding 80 acres or more. Therefore, it was determined that the Application would require a permit. According to a July 25, 1995, letter from the State Engineer, "all drainage applications received for projects within the Devils Lake Basin will be, until further notice, of statewide significance". This was later adopted in 2020 into the DWR Policy No. REG-2020-3 section 3.1.1.7.1. Therefore, the Application was determined to drainage of statewide or interdistrict significance.

On September 6, 2019, the DWR issued their determination, determining the proposed drainage is drainage of statewide or interdistrict significance. In the DWR's determination, the DWR stressed that it will not issue a permit if the District's or DWR's evaluation of the Application and project yields 1) additional watershed area contributing to Devils or Stump Lakes, and 2) additional water being drained below the natural outlet of the slough complex. The Application was then sent to the District for continued processing.

District Held Hearing

In accordance with N.D.A.C. § 89-02-01-09.1, the District held a hearing regarding the Application on November 19, 2019, at the Nelson County Courthouse in Lakota, North Dakota.

Brain Mager of the DWR was present at the meeting along with representatives from the Applicant, the District, Nelson County Highway Department, U.S Fish and Wildlife Service, Williams Township, Wamduska Township, and numerous area landowners and residents.

Oral testimony was given showing many of the attendants were in support of the project. Some minor concerns were also given in testimony, including whether the project will have adverse effects downstream and upstream of the project and what standards are being met for the side slopes of the ditch channels being constructed as part of the project.

The only written testimony was given from Peter Wax at the Department of Environmental Quality (DEQ). In Mr. Wax's testimony he states that "the drain must not cause an exceedance of the numeric water quality standard or violate the antidegradation policy as outlined in N.D.A.C. § 33.1-16-02.1 (water quality standards)".

District's Decision

Following the hearing and on December 19, 2019, the District issued their "Order Approving Application No. 5254 – County Road 22 Drain" (Order) and forwarded the Application to the DWR for consideration. In its Order, the District included one condition to the approved Application. The condition is as follows:

Application is APPROVED ON THE CONDITION that the requirements, if any, of the U.S. Corps of Engineers, the OSE, the North Dakota Department of Environmental Quality (each of who presented information that is part of the record of the Board's November 19, 2019 hearing), and any other state or federal agency having oversight authority regarding the County Road 22 Drain be complied with.

DWR REVIEW

N.D.C.C. § 61-32-03 and N.D.A.C. § 89-02-01-09.1(1)(k) require the DWR and State Engineer to give final approval to applications proposing drainage of statewide or interdistrict significance. According to N.D.A.C. § 89-02-01-09.4,

In the state engineer's evaluation of statewide or interdistrict significance applications, the state engineer must use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The state engineer may use any information in the files and records retained by the state engineer's office or engineering information developed or obtained through investigation of the project area by the state engineer's staff. The state engineer may also request information or comment from independent sources, but is not required to delay the decision for more than thirty days from the date of request while waiting for comment from these sources. All information used must be relevant and is part of the record.

The District provided all relevant documentary information submitted and oral testimony from the hearing to the DWR as well as supplemental information submitted by the Applicant for the Application. The District's primary document provided included the Index of the Record for the post-hearing (see file). This document includes all relevant information the District considered for its decision on the Application. Additional information that the DWR considered included any information provided by and any correspondence with the Applicant and the Applicant's engineer (see Exhibit 2). The most relevant documentation reviewed for the Application includes the following Exhibits:

DWR Exhibit 1 – Applicant's Engineer's Memorandum and supporting documents (see file)

DWR Exhibit 2 – Post-hearing Index, which includes the:

- Application for Surface Drain
- Districts' Order (see pages 37-42)
- Hearing transcript (see pages 46-59)

DWR Exhibit 3 – DWR Memorandum supporting Statewide and Interdistrict Significance, dated September 6, 2019

DWR Exhibit 4 – DEQ comment letters, dated November 7, 2019, and November 13, 2019

DWR REVIEW OF APPLICATION

N.D.A.C. § 89-02-01-09.2 lists the factors water resource districts must consider in the evaluation of an application to drain. The DWR must also consider these same factors when evaluating statewide or interdistrict significance applications. These factors include:

1. The volume of water to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.
2. Adverse effects that may occur to the lands of lower proprietors. This factor is limited into the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.
3. The engineering design and other physical aspects of the drain.
4. The project's impact on flooding problems in the project watershed.
5. The project's impacts on ponds, sloughs, or lakes having recognized fish and wildlife values.
6. The project's impact on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

Factor No. 1: The volume of water to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.

The project is a drain that will remove high water around Nelson County Road 22. The drain will discharge into a watercourse that is part of the Stump Lake Basin, which is the same watercourse the sloughs that are being drained naturally discharge into.

The Applicant's Engineer did not provide a volume of water nor was a volume estimated by the District that would be drained by the project. However, the purpose of the project is to lower the sloughs surrounding the intersection of 39th Street NE and Nelson County Road 22 by a depth of 1-foot.

I determined an approximate water surface area for the sloughs being drained from Google Earth Pro Imagery as 260 acres. Knowing that the project will drain approximately 1-foot of surface water, an approximate volume to be drained would be 260 acre-feet.

Since the proposed drain will discharge into the same watercourse that the sloughs currently drain into, the drained water should have no noticeable increase in flow or water quality in the watercourse that the project will discharge. Additionally, the proposed drain will be regulated by using 18-inch culverts and a set inlet elevation on the final culvert section. These factors will control the amount of water the proposed project can discharge.

Finally, the Applicant has argued that the project will not actually drain additional volume of water beyond the natural maintenance elevation of the sloughs. This elevation is considered 1515.2 feet NAVD88 from the KLJ's May 28, 2020 survey. The DWR is aware that a known reason for the project design is the Applicant's inability to gain access to the sloughs' natural outlet, thereby negating the ability to maintain the sloughs' outlet. Therefore, the project is intended to mimic the natural maintenance of the slough such that additional drainage in the Devils Lake Basin will not occur.

Factor No. 2: Adverse effects that may occur to the lands of lower proprietors. This factor is limited into the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.

The project should have minimal effects on downstream proprietors. The project discharges into what appears to be a well-established watercourse that should be able to contain any additional water the project may discharge. This is also being addressed by controlling the inlet elevation on the last section of pipe for the drain project.

Effects from erosion impacts could happen to the outlet on each proposed culvert and in the newly constructed drain channels if correct measures are not taken.

Factor No. 3: The engineering design and other physical aspects of the drain.

KLJ Engineering Devils Lake Office designed and developed the project. The project's ditch sections meet Nelson County Standards. The proposed 18-inch culverts are designed to meet North Dakota Stream Crossing Standards.

The Application states that a side slope of 4:1 will be used. However, during the hearing it was stated by the Applicant's Engineer that a side slope of 3:1 would be used. Since design plans were not submitted as part of the Application, it cannot be verified which side slope the proposed project was designed with. Either a 4:1 or 3:1 side slope would be acceptable if it meets the governing road standards for Nelson County.

KLJ stated during the hearing that all federal, state, and local requirements will be met.

Factor No. 4: The project's impact on flooding problems in the project watershed

The project should not have a negative impact on the watershed downstream of the project. As stated, the project is intended to mimic maintenance on the existing sloughs in this area.

The project's purpose is to alleviate flooding problems within the project's immediate watershed. With the design meeting all federal, state, and local standards, flooding problems around Nelson County Road 22 should be lessened. However, with only allowing a maximum 1-foot lowering of the sloughs, water will remain around County Road 22. While the project may solve flooding problems, the structural integrity of County Road 22 may not be corrected without further action.

Factor No. 5: The project's impacts on ponds, sloughs, or lakes having recognized fish and wildlife values.

With the project lowering the local sloughs by a max elevation of 1-foot, some wildlife values of the local sloughs may be lost. However, with the projects purpose of lowering the water in the slough, the sloughs will remain. In conclusion, while the sloughs may lose some wildlife values, it should be minimal.

Therefore, the project should not have any appreciable impact on ponds, sloughs, or lakes with recognized fish values.

Factor No. 6: The project's impact on agricultural lands.

The project should have a positive impact on agricultural lands. This being that if the local sloughs are lowered some additional land around the sloughs should become available for agricultural use.

There should be no impact on agricultural lands downstream of the project given the drainage will be confined to the well-established watercourse into which the project will drain.

Factor No. 7: Whether easements are required.

According to the Applicant's Engineer from the hearing testimony, easements will be required and should be in the process of being acquired. The project will mostly fall within the statutory right-of-way of Nelson County Road 22 and 39th Street NE (Williams Township).

Factor No. 8: Other factors unique to the project.

Peter Wax with the North Dakota Department of Environmental Quality issued a letter dated November 13, 2019 stating that "the drain must not cause an exceedance of the numeric water quality standard or violate the antidegradation policy as outlined in N.D.A.C. § 33.1-16-02.1".

The Applicant is meeting these requirements by setting the inlet elevation at 1515.20 ft NAVD88 on the final section of proposed culvert. This matches the natural outlet elevation of the adjacent sloughs. By doing this the sloughs impacting Nelson County Road 22 will lower in water surface elevation while also not allowing a substantial increase in the water discharging into the natural waterway thus not increasing the numeric water quality standard.

Recommendation

I believe no further information is required by the DWR to complete final review of Application No. 5254. In evaluating this Application, all information given for the District's consideration and information in the DWR's files and records was considered. Therefore, I believe this Application has been reviewed and investigated in accordance with N.D.C.C. title 61 and N.D.A.C. ch. 89-02-01. As a result of the DWR's investigation, as stipulated in N.D.A.C. § 89-02-01-09.4, the following is a compilation of all additional condition recommendations as described in this memorandum, which are in addition to the District's established conditions:

11. Permittee will not construct or improve the Project in any manner that exceeds the dimensions indicated in the Application or this Permit; any modification will require approval by DWR and the District.
12. Permittee As-built drawings of the Project must be provided to the DWR and District within 6 months after the Project is substantially complete. The as-built drawings must be provided at the Permittee's expense and may be subject to DWR and District's review and approval.
13. Access to the Project for the purpose of inspection shall not be denied to representatives of the DWR, State Water Commission, Nelson County, or District.
14. Inlet elevation to proposed pipe constructed in Section 20 shall not be installed lower than 1515.20 feet (NAVD 88).

Based on my review and investigation of the Project, I recommend the State Engineer approve Application for Surface Drain No. 5254, subject to the above conditions.

SURFACE DRAIN PERMIT NO. 5254
 WATER RESOURCE DISTRICT PERMIT NO. _____

This permit authorizes the permittee to drain a pond, slough, lake, sheetwater, or any series thereof, according to North Dakota Century Code (N.D.C.C.) § 61-32-03 and North Dakota Administrative Code (N.D.A.C.) ch. 89-02-01.

Name of Permittee: **Nelson County Commission**
210 B Ave STE 201
Lakota, ND 58344

Water Resource District: **Nelson County Water Resource District**
 Feature to Be Drained: **Pond, Slough, Lake, Or Any Series Thereof, Road Right-Of-Way Nelson County Road 22**

Purpose of Drainage: **Flood Relief, Structural Integrity Nelson County Road 22**

Location of Drain (Department of Water Resources Location Map Attached):

Drain Alignment: **W 1/2 of Section 16, N 1/2 of Section 20, NE 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County**

Drain Outlet Location: **NE 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County**

Stream: **McHugh Slough**
 Basin: **Devils Lake – Sheyenne River**

Is the proposed drainage of statewide or interdistrict significance?: **YES**

Design Data:

Type of project:	Modification Of Existing Drain
Contributing watershed area (approximate):	2,157 Acres
Assessment Drain?:	No
If YES, Name of Drain:	
Type of modification(s) (if applicable):	
Drainage Method:	Gravity

SURFACE DRAIN PERMIT NO. 5254 (CONTINUED)

Drainage Method Information:

Gravity Type:	Ditch	
Length of Drain:	11,000	Feet
Maximum Cut:	5.5	Feet
Bottom Width:	3	Feet
Side Slopes:	4:1	S:1 Foot

Drainage Method Information:

Gravity Type:	Pipe	
Length of Drain:	6,000	Feet
Pipe Diameter:	1.5	Feet
Pipe Slope:	0.005	Inches / Foot

SURFACE DRAIN PERMIT NO. 5254 (CONTINUED)

According to North Dakota Century Code § 61-32-03 and North Dakota Administrative Code (N.D.A.C.) ch. 89-02-01, the Department of Water Resources (DWR), and the Nelson County Water Resource District (District) in their December 19, 2019 "Order Approving Application for Surface Drain No. 5254 – County Road 22 Drain (Order)," approve Surface Drain Permit No. 5254 subject to the below conditions and the conditions in the District's Order. This document serves to compile all District and DWR conditions attached to Surface Drain Permit No. 5254, for the County Road 22 Drain (Project) for Application for Surface Drain Application No. 5254.

CONDITIONS TO PERMIT

1. According to N.D.A.C. § 89-02-01-09.11, the project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
2. According to N.D.A.C. § 89-02-01-09.11, construction must be completed within two years from the final approval date or the permit is void. The two-year period does not begin until any appeal is complete.
3. According to N.D.A.C. § 89-02-01-09.11, the Department of Water Resources or water resource district may attach other conditions to the permit if necessary. **If applicable, any other permit conditions adopted by the water resource district will be attached on separate sheets.**
4. This permit applies to the specific project and project location described and depicted in the permit application.
5. The Permittee, project owner, project sponsor, landowner, and any associated parties may be liable for all activity conducted and all effects caused by the construction, modification, and operation of the project as described in the application and this permit. Consequently, the receipt of this permit does not relieve the Permittee, project owner, project sponsor, landowner, or any associated parties from liability resulting from the construction, modification, or operation of the project approved under this permit.
6. If prior to or during construction items of substantial archeological value are discovered or a deposit of such items are disturbed, the Permittee shall cease construction activities in the area so affected. The Department of Water Resources must be promptly notified of the discovery and construction must not resume until the Department of Water Resources gives written permission.
7. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.
8. According to N.D.A.C. § 89-02-01-09.11, all highly erodible drainage channels must be seeded to a sod-forming grass.
9. According to N.D.A.C. § 89-02-01-09.11, vegetative cover must be adequately maintained for the life of the project or control structures must be installed.
10. According to N.D.A.C. § 89-02-01-09.11, receipt of a permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.


SURFACE DRAIN PERMIT NO. 5254 (CONTINUED)

SPECIAL CONDITIONS TO PERMIT

11. Permittee will not construct or improve the Project in any manner that exceeds the dimensions indicated in the Application or this Permit; any modification will require approval by DWR and the District.
12. Permittee As-built drawings of the Project must be provided to the DWR and District within 6 months after the Project is substantially complete. The as-built drawings must be provided at the Permittee's expense and may be subject to DWR and District's review and approval.
13. Access to the Project for the purpose of inspection shall not be denied to representatives of the DWR, State Water Commission, Nelson County, or District.
14. Inlet elevation to proposed pipe constructed in Section 20 shall not be installed lower than 1515.20 (NAVD 88).

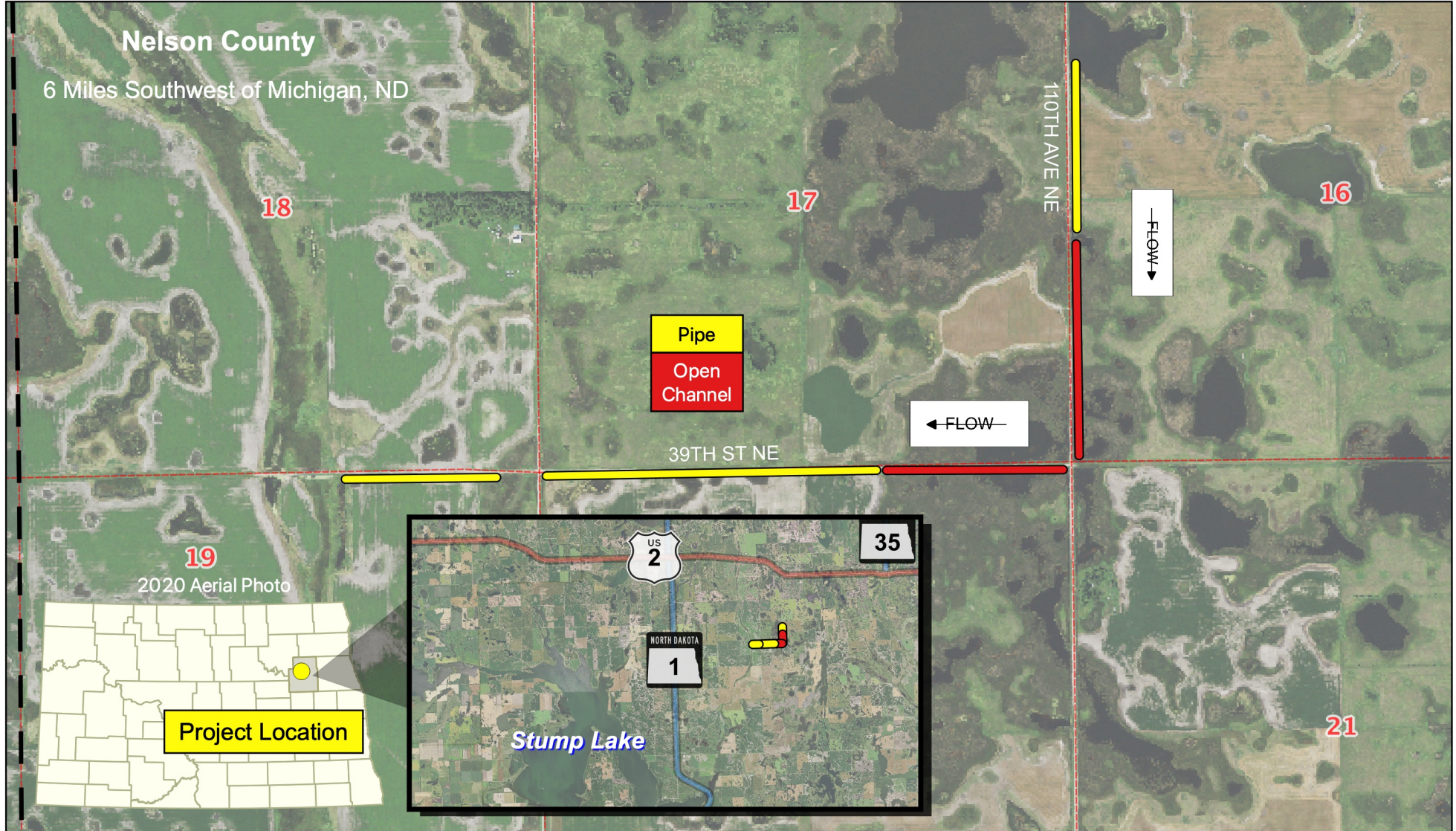
RECOMMENDATIONS

15. Any and all requirements set by the U.S. Corps of Engineers, N.D. Department of Environmental Quality, and any other state or federal agency having oversight authority regarding the Project shall be complied with.
16. All appropriate erosion control measures must be taken during project construction and once the project is complete to ensure that no unnecessary erosion occurs due the implementation of this project.



John Paczkowski, P.E.
State Engineer

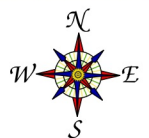
Date: 12/21/2021



Drain Permit Application No. 5254 - Nelson County Commission

Nelson County Drain

W 1/2 Section 16, NE 1/4 Section 19, N 1/2 Section 20, T152N, R59W, Nelson County



Date: 10/6/2021
Prepared by: CWN

DWR Exhibit 1

Memorandum of Findings 5/28/2020 (Paul Bjornson, KLJ):

KLJ surveyed the three areas marked on the map with pink dots on 5/28/2020. The surface elevation of south slough is currently at 1514.5. That water is held back by a ridge of existing ground at an elevation of 1515.2. None of that ridge can be excavated. The middle slough that it would spill into is already equalized with the slough to the north, at an elevation of 1515.0.

Cleaning out the previously surveyed channel (shown with yellow dots on the map) west of the north slough would provide relief to a portion of Nelson County 22, but would not help the intersection with the Township road, unless some underground seepage takes place.

It is our understanding that the NDSWC would not allow any drainage of the south slough below the natural outlet elevation, which was established in this survey to be 1515.2 NAVD88.



Legend

- 1903-01892 TOPO 11-06-2019
- 1903-01892 TOPO 5-28-2020
- Local_Roads_of_Concern

Contour

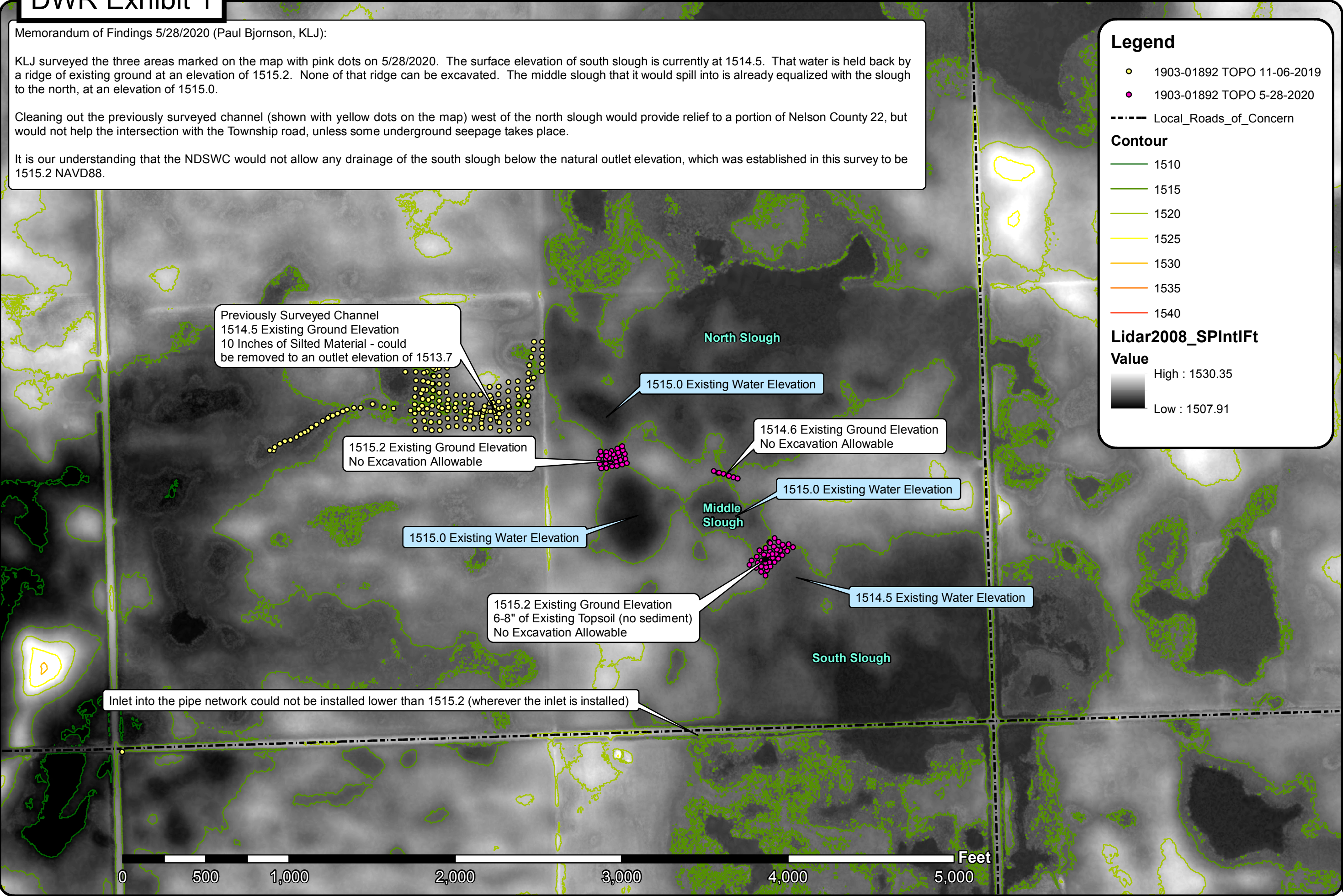
- 1510
- 1515
- 1520
- 1525
- 1530
- 1535
- 1540

Lidar2008_SPIntlFt

Value

High : 1530.35

Low : 1507.91



Nelson County Drainage Survey 1903-01892 Task 2
Survey Area May 28, 2020
Summary of Existing Ground Elevations, Water Elevations, and Sediment Depths at Potential Outlet Locations
HORIZONTAL DATUM: US STATE PLANE NAD83 NORTH DAKOTA NORTH 3301, INTERNATIONAL FEET
VERTICAL DATUM: NAVD 88
BACKGROUND ELEVATION DATA SOURCE: IWI LIDAR 2008

PROJECT NUMBER:	1903-01892 Task 2
PROJECT LOCATION:	Nelson County 22
DATE:	JUNE 2, 2020
SCALE:	1:6,330.85



1820 Walnut Street East, Suite 6
Devils Lake, ND 58301-3411
701.662.1960
KLJENG.COM

Memorandum

Date: 11/6/2019
To: Nelson County Commission
Copy to: Nelson County Highway Dept.
From: Anthony Herman, PE
RE: CR22 Outlet Survey with Soil Scientists

Remarks

Preliminary survey data was collected in June of 2017. Additional ground elevations were collected on Monday, November 4th, 2019. Survey Technicians (Jed Arneson, Dalton Tell) under the direct supervision of Professional Land Surveyor Christopher Ingersoll from KLJ and a Soil Scientist (David Breker) joined Anthony Herman on site to locate the outlet elevation of an adjacent slough threatening Nelson County Highway 22 (predominantly in the E ½ of Sec17, T152N, R59W, draining through the N ½ of SW ¼ of said section).

Prior to arriving on site, KLJ narrowed down the suspected outlet area via International Water Institute (IWI) 2-foot contours from 2010 Aerial LiDAR.

On site, KLJ profiled the approximate center line of the channel noting the high point. Total range of elevation though the area initially profiled was 0.38 ft, from ponded water to ponded water. Three locations around the approximate high point were then cross sectioned to verify the lowest point of outlet across the channel.

Accounting for the relatively flat slopes of the outlet area, the accuracy of the elevations collected, and the roughness of the terrain covered in grass, we estimate the current outlet elevation to be approximately 1,514.5 ft based on NAVD88, GEOID 12A.

Once the outlet location was found, David Breker, a North Dakota Registered Soil Classifier (registration certificate #41) extracted and inspected the soil profile around that area. Samples 1 and 2 showed a layer of silted material approximately 10 inches thick. Normally silted material may be removed during a maintenance operation of a water course. The two soil profiles along with David's findings is attached.

These two findings would put the natural, cleaned-out, outlet elevation at approximately 1513.7ft.

KLJ set two control points at GPS point numbers: 0010, and 0011, with elevations of 1518.97ft and 1513.98ft respectively. A listing of GPS points is attached, along with an aerial map.


Anthony Herman, PE
KLJ

Anthony Herman

From: David & Jan Breker <dbreker@rrt.net>
Sent: Wednesday, November 6, 2019 7:24 AM
To: Anthony Herman
Subject: RE: Nelson County - CR 22 Natural Outlet Elev.
Attachments: 002.jpg; 001.jpg

Anthony,

On November 4, we dug on the natural outlet between two wetland for the Nelson County project near CR 22. Sample 1 was an upland soil and sample 2 was a wetland soil. KLJ engineers surveyed the elevations and GPS locations through the natural outlet and the sample points.

I identified 10 inches of silty sediment on the natural outlet high spot between the two wetlands. Normally silty sediment can be removed during clean-out.

We did not see the CR 22 drain or any laterals drains. I did not make any determination how the drains or clean-out would affect the drainage of the two wetlands.

Attached are the two soil profiles.

David Breker

On Friday 11/01/2019 at 3:47 pm, Anthony Herman wrote:

David & Chris, we just got the go ahead on this work.

When would be a good time to meet on site and complete this?

The County want's it done ASAP since they have a hearing on the project comping up in a little over a week.

Internal file path: P:\County\ND\Nelson\1903-01892_CR22DrainageSurvey

Thanks,
Anthony Herman
KLJ - Devils Lake
701-230-2709 Cell

From: David & Jan Breker <dbreker@rrt.net>
Sent: Thursday, September 26, 2019 2:39 PM
To: Anthony Herman <Anthony.Herman@kljeng.com>
Subject: Re: Nelson County - CR 22 Natural Outlet Elev.

Anthony,

Attached is the ScopeFee for the Nelson County project. I used the document that has worked for other KLJ jobs. I didn't know the acres for the study area so I just put ??? at the end of the first paragraph.

Let me know if you need something different.

Dave Breker

On Thursday 09/26/2019 at 9:45 am, Anthony Herman wrote:

David,

Nelson county commission has asked us to find and determine the cleaned-out natural outlet elevation to a slough adjacent to CR 22.

I have attached a KMZ of the area to be searched. Note the "Potential Outlet Area" on the north end of all the old survey (from a previous project). The areas are based on that survey spot elevations and IWI topo lines.

They'd like to complete this survey and analysis asap.

Please call my cell when able to discuss, if this is something that you may be interested in.

Thanks,

Anthony Herman

KLJ

701-662-1960 Direct

701-230-2709 Cell

1820 Walnut Street E, Suite 6

Devils Lake, ND 58301-3411

kljeng.com

Nov 4 2019

David Becker

1514.38

SOIL

CR22 Nelson County

Sampling Point: 1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹	Loc ²		
0-10	10YR 2/1						sil	no reaction
10-13	10YR 2/1						sil	no reaction
13-16	10YR 2/1						cl	with few pebbles
16-22	10YR 6/4	20					cl	no reaction
22-30	10YR 4/2	80						
22-30	10YR 5/3	95	7.5YR 7/6	5	C	m	cl	slight reaction

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains.²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

Indicators for Problematic Hydric Soils³:

- ☐ Histosol (A1)
- ☐ Histic Epipedon (A2)
- ☐ Black Histic (A3)
- ☐ Hydrogen Sulfide (A4)
- ☐ Stratified Layers (A5) (LRR F)
- ☐ 1 cm Muck (A9) (LRR F, G, H)
- ☐ Depleted Below Dark Surface (A11)
- ☐ Thick Dark Surface (A12)
- ☐ Sandy Mucky Mineral (S1)
- ☐ 2.5 cm Mucky Peat or Peat (S2) (LRR G, H)
- ☐ 5 cm Mucky Peat or Peat (S3) (LRR F)

- ☐ Sandy Gleyed Matrix (S4)
- ☐ Sandy Redox (S5)
- ☐ Stripped Matrix (S6)
- ☐ Loamy Mucky Mineral (F1)
- ☐ Loamy Gleyed Matrix (F2)
- ☐ Depleted Matrix (F3)
- ☐ Redox Dark Surface (F6)
- ☐ Depleted Dark Surface (F7)
- ☐ Redox Depressions (F8)
- ☐ High Plains Depressions (F16)
- ☐ (MLRA 72 & 73 of LRR H)

- ☐ 1 cm Muck (A9) (LRR I, J)
- ☐ Coast Prairie Redox (A16) (LRR F, G, H)
- ☐ Dark Surface (S7) (LRR G)
- ☐ High Plains Depressions (F16)
- ☐ (LRR H outside of MLRA 72 & 73)
- ☐ Reduced Vertic (F18)
- ☐ Red Parent Material (TF2)
- ☐ Very Shallow Dark Surface (TF12)
- ☐ Other (Explain in Remarks)
- ³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes _____ No ☒

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one required; check all that apply)

- ☐ Surface Water (A1)
- ☒ High Water Table (A2)
- ☒ Saturation (A3)
- ☐ Water Marks (B1)
- ☐ Sediment Deposits (B2)
- ☐ Drift Deposits (B3)
- ☐ Algal Mat or Crust (B4)
- ☐ Iron Deposits (B5)
- ☐ Inundation Visible on Aerial Imagery (B7)
- ☐ Water-Stained Leaves (B9)
- ☐ Salt Crust (B11)
- ☐ Aquatic Invertebrates (B13)
- ☐ Hydrogen Sulfide Odor (C1)
- ☐ Dry-Season Water Table (C2)
- ☐ Oxidized Rhizospheres on Living Roots (C3)
- ☐ (where not tilled)
- ☐ Presence of Reduced Iron (C4)
- ☐ Thin Muck Surface (C7)
- ☐ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ☐ Surface Soil Cracks (B6)
- ☐ Sparsely Vegetated Concave Surface (B8)
- ☐ Drainage Patterns (B10)
- ☐ Oxidized Rhizospheres on Living Roots (C3)
- ☐ (where tilled)
- ☐ Crayfish Burrows (C8)
- ☐ Saturation Visible on Aerial Imagery (C9)
- ☐ Geomorphic Position (D2)
- ☒ FAC-Neutral Test (D5) Red Clay 99% 1/25
- ☐ Frost-Heave Hummocks (D7) (LRR F)

Field Observations:

Surface Water Present? Yes ☒ No ☒ Depth (inches): _____Water Table Present? Yes ☒ No _____ Depth (inches): 3Saturation Present? Yes ☒ No _____ Depth (inches): 0

(includes capillary fringe)

Wetland Hydrology Present? Yes ☒ No _____

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

SOIL

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹	Loc ²		
0-10	10YR 2/1						sil	no eff
10-18	10YR 2/1	70					sil	few pebbles
	10YR 5/2	10						strong efferv
	10YR 7/1	20						
18-26	10YR 7/1	35	7.5YR 4/6	5	c	m	cl	strong eff
	10YR 6/2	50						
	2.5Y 6/6	10						

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. ²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

Indicators for Problematic Hydric Soils³:

- ☐ Histosol (A1)
☐ Histic Epipedon (A2)
☐ Black Histic (A3)
☐ Hydrogen Sulfide (A4)
☐ Stratified Layers (A5) (LRR F)
☐ 1 cm Muck (A9) (LRR F, G, H)
☐ Depleted Below Dark Surface (A11)
☒ Thick Dark Surface (A12)
☐ Sandy Mucky Mineral (S1)
☐ 2.5 cm Mucky Peat or Peat (S2) (LRR G, H)
☐ 5 cm Mucky Peat or Peat (S3) (LRR F)

- ☐ Sandy Gleyed Matrix (S4)
☐ Sandy Redox (S5)
☐ Stripped Matrix (S6)
☐ Loamy Mucky Mineral (F1)
☐ Loamy Gleyed Matrix (F2)
☐ Depleted Matrix (F3)
☐ Redox Dark Surface (F6)
☐ Depleted Dark Surface (F7)
☐ Redox Depressions (F8)
☐ High Plains Depressions (F16)
 (MLRA 72 & 73 of LRR H)

- ☐ 1 cm Muck (A9) (LRR I, J)
☐ Coast Prairie Redox (A16) (LRR F, G, H)
☐ Dark Surface (S7) (LRR G)
☐ High Plains Depressions (F16)
 (LRR H outside of MLRA 72 & 73)
☐ Reduced Ventic (F18)
☐ Red Parent Material (TF2)
☐ Very Shallow Dark Surface (TF12)
☐ Other (Explain in Remarks)

³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):

 Type: _____
 Depth (inches): _____
Hydric Soil Present? Yes ☒ No ☐

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one required; check all that apply)

- ☐ Surface Water (A1)
☒ High Water Table (A2)
☒ Saturation (A3)
☐ Water Marks (B1)
☐ Sediment Deposits (B2)
☐ Drift Deposits (B3)
☐ Algal Mat or Crust (B4)
☐ Iron Deposits (B5)
☐ Inundation Visible on Aerial Imagery (B7)
☐ Water-Stained Leaves (B9)

- ☐ Salt Crust (B11)
☐ Aquatic Invertebrates (B13)
☐ Hydrogen Sulfide Odor (C1)
☐ Dry-Season Water Table (C2)
☐ Oxidized Rhizospheres on Living Roots (C3)
 (where not tilled)
☐ Presence of Reduced Iron (C4)
☐ Thin Muck Surface (C7)
☐ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

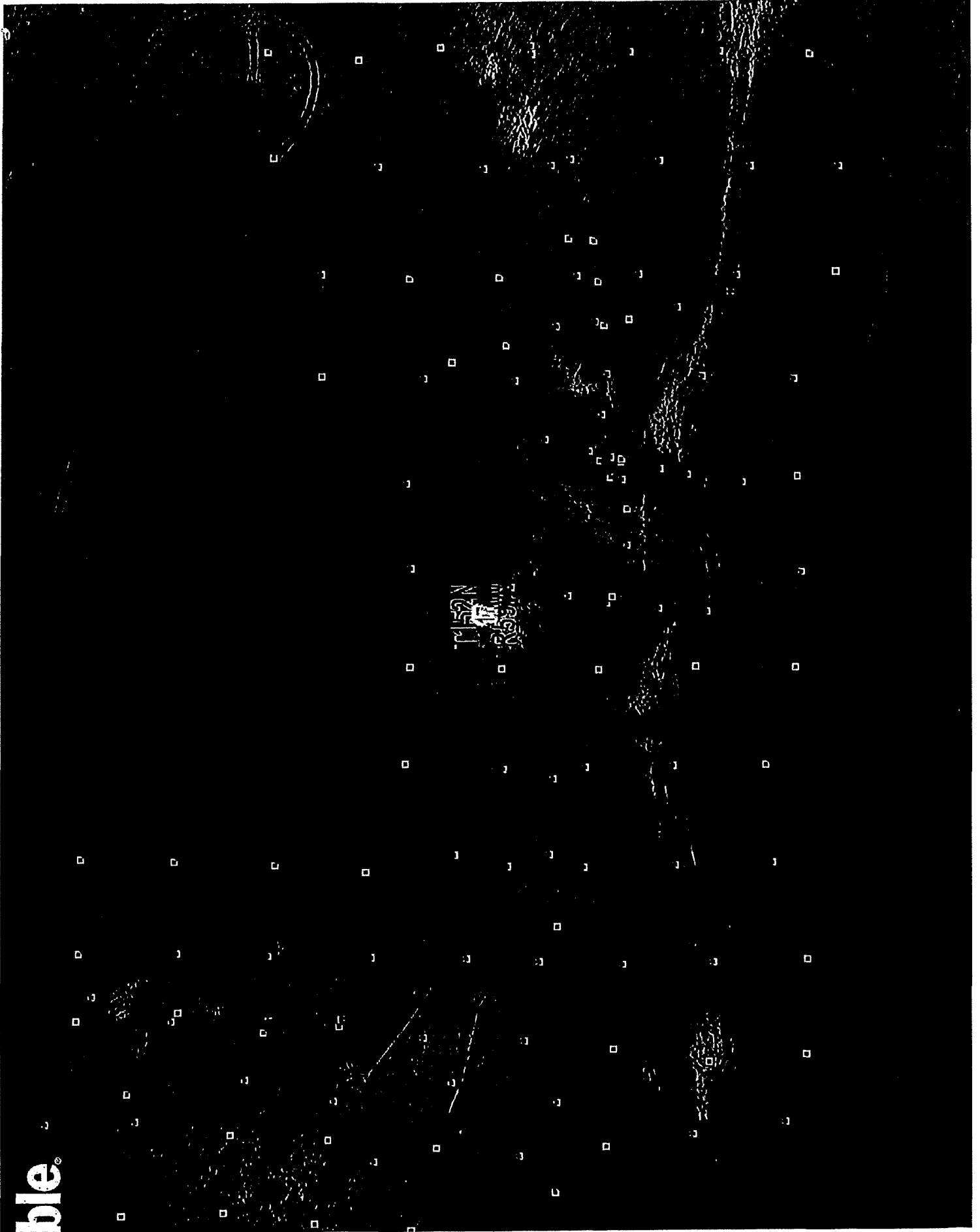
- ☐ Surface Soil Cracks (B6)
☐ Sparsely Vegetated Concave Surface (B8)
☐ Drainage Patterns (B10)
☐ Oxidized Rhizospheres on Living Roots (C3)
 (where tilled)
☐ Crayfish Burrows (C8)
☐ Saturation Visible on Aerial Imagery (C9)
☒ Geomorphic Position (D2)
☒ FAC-Neutral Test (D5) Red Canarygrass 10/23
☐ Frost-Heave Hummocks (D7) (LRR F)

Field Observations:

 Surface Water Present? Yes ☐ No ☒ Depth (inches): _____
 Water Table Present? Yes ☒ No ☐ Depth (inches): 3
 Saturation Present? Yes ☒ No ☐ Depth (inches): 0
 (includes capillary fringe)
Wetland Hydrology Present? Yes ☒ No ☐

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:



ble®

Name:

\\frgo-panz01\Data\IP\FRGO\frgo_projects\County\ND\Nelson\1903-01892_CR22DrainageSurvey\Survey\TBC\1903-01892 TOPO.vce

Name: US State Plane 1983

Datum: NAD 1983 (2011)

Modified: 11/6/2019 11:44:36 AM (UTC:-6)

Zone: North Dakota North 3301

Geoid: GEOID12A (Conus)

Reference number: 1903-01892

Vertical datum: NAVD88

Description: Outlet TOPO

Units: International Feet

Crew: J Arneson, D Tell

Field Book:

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APPLICATION FOR SURFACE DRAIN
OFFICE OF THE STATE ENGINEER
REGULATORY DIVISION
SFN 2830 (3/2018)

DWR Exhibit 2

Number

(OSE USE ONLY)

Number

(WRD USE ONLY)

This application must be submitted to the North Dakota Office of the State Engineer by mail to 900 E Boulevard Ave, Dept. 770, Bismarck, ND 58505-0850, by fax to (701) 328-3696, or by email to swcregpermits@nd.gov. To be complete, this application must include the additional information listed in the instructions on page 3.

If you need any assistance, please contact the Regulatory Division at (701) 328-2752.

OFFICE OF THE STATE ENGINEER
USE ONLY
1/22/18 2018
DATE RECEIVED

**** Additional Sheets May Be Attached If Necessary. ****

Water Resource District In Which Majority Of Project Watershed Is Located				
Nelson County				
Location Of Drain (drain center line) (use separate sheet(s) if necessary)				
¼ w1/2	Section 16	Township 152	Range 59	County Nelson
¼ n1/2	Section 20	Township 152	Range 59	County Nelson
¼	Section	Township	Range	County
Drain Outlet Location And Information				
¼ NE	Section 19	Township 152	Range 59	County Nelson
Where Does The Drain Outlet Discharge?				
<input checked="" type="checkbox"/> Road Ditch <input checked="" type="checkbox"/> Stream, River, Coulee, etc. <input type="checkbox"/> Assessment Drain				
<input type="checkbox"/> Private Drain <input type="checkbox"/> Pond, Slough, Or Lake <input type="checkbox"/> Other (please explain) _____				
Name Of Drain Or Water Body Where Drain Outlets (If applicable)				
It drains into the Stump Lake Basin				
Purpose Of Drainage (mark all that apply)				
<input type="checkbox"/> Agricultural Drainage <input checked="" type="checkbox"/> Flood Relief <input checked="" type="checkbox"/> Other (please explain) <u>Structural Integrity Nelson County Road 22</u>				
Feature To Be Drained (mark all that apply)				
<input checked="" type="checkbox"/> Pond, Slough, Lake, Or Any Series Thereof <input type="checkbox"/> Sheetwater/Overland Flow				
<input checked="" type="checkbox"/> Other (please explain) <u>Road right of way Nelson County Road 22</u>				
If Draining A Pond, Slough, Lake Or Any Series Thereof, How Far Down Will You Drain Them?				
<input type="checkbox"/> Completely <input type="checkbox"/> Partially				
Design Data				
<input type="checkbox"/> New Drain Construction <input checked="" type="checkbox"/> Modification Of Existing Drain				
Approximate Watershed Area Contributing To Drain, if known (acres)				
TBD				
Is This An Assessment Drain?		If Yes, Please List Name Of Drain		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Type Of Modification To Existing Drain (If applicable)				
<input type="checkbox"/> Deepening <input type="checkbox"/> Widening <input type="checkbox"/> Extending <input checked="" type="checkbox"/> Rerouting <input type="checkbox"/> Other (please explain) _____				
Who Designed The Drain?				
<input checked="" type="checkbox"/> Self <input checked="" type="checkbox"/> Engineering Firm/Agency <u>KLJ has done engineering</u> <input type="checkbox"/> Other (please explain) <u>Brian Johnson</u>				

(continued on page 2)

Additional Project Details, Design Information, and Comments			
The project will lower water one foot to relieve high water damage to Nelson County Road 22 to enhance safety and preserve the structural integrity of a well traveled county road. Slope 0-0.5 to mimic natural watercourse discharge elevation. Target elevation is 1511.6, the discharge elevation is 1509.			
Drainage Method			
<input checked="" type="checkbox"/> Gravity (See Section A) <input type="checkbox"/> Pumping (See Section B) <input type="checkbox"/> Placement Of Fill (See Section C)			
(A) Gravity (if checked above)			
Gravity Type (please fill appropriate fields below)			
<input checked="" type="checkbox"/> Ditch <input checked="" type="checkbox"/> Pipe			
Ditch		Length Of Drain (feet)	Maximum Cut (D) (feet)
		11,000 feet	5.5 feet to stay in road right of way.
		Bottom Width (B) (feet)	Side Slopes (S:1 foot)
		3 feet	4:1
Pipe Diameter (feet)		Pipe Slope (feet per foot)	
1.5 feet for 6,000 feet		.005 inches per foot	
(B) Pumping (if checked above)			
Pumping Rate (gallons per minute)		Pumping Rate (cubic feet per second)	
N/A		N/A	
Pump Style		Pump Type	
<input type="checkbox"/> Movable <input type="checkbox"/> Fixed or Stationary		<input type="checkbox"/> Submersible <input type="checkbox"/> Other _____	
(C) Placement Of Fill (if checked above)			
Fill Volume (cubic yards)			
N/A			
Other Information			
Will The Drain Incorporate A Control Structure? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If Yes, Please Explain			
Anticipated Construction Start Date		Anticipated Construction Completion Date	
Summer/Fall 2018		Summer 2019	
Applicant's Certification			
I, the undersigned, am applying for a permit as required under North Dakota Century Code (N.D.C.C.) § 61-32-03. I understand that I must comply with N.D.C.C. § 61-32-03 and North Dakota Administrative Code ch. 89-02-01, and that I must adhere to any conditions required by the Water Resource District and State Engineer as part of an approved permit for this application. Additionally, I acknowledge that my project is accurately described and depicted in this application as I intend to construct it. My signature below acknowledges that I have read and agree to these statements.			
Affiliation To Proposed Drain			
<input type="checkbox"/> Landowner <input type="checkbox"/> Renter/Tenant <input type="checkbox"/> Water Resource District/Agency <input checked="" type="checkbox"/> Other <u>Nelson County</u>			
Applicant Name (if not an individual, please list organization name)			
Nelson County Commission			
Address		City	State
210 B Ave E STE 201		Lakota	ND
ZIP Code			
58344			
Telephone Number	Cell Phone Number	Email Address	
701-247-2463	701-270-2354	jjtenneson@nd.gov	
Applicant Signature			Date
			12-4-18
Landowner Name (print) (if not the applicant)			
Landowner Signature (if not the applicant)			Date

Office of the State's Attorney

Nelson County, North Dakota

210 B Avenue West, Suite 301
Lakota, ND 58344-7410

RECEIVED
DEC 10 2018
STATE OF NORTH DAKOTA

Phone: (701) 247-2138
Fax: (701) 247-2367

Jayne Tenneson
Nelson County State's Attorney

November 30, 2018

Garland Eberle
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

Mr. Eberle,

I am writing on behalf on Nelson County's involvement in the County Road 22 project within the county. The County is working diligently to resolve the issues that were created due to this drain project.

This specific drain project's only purpose is to work to maintain the integrity of Nelson County Road 22. Nelson County fears that without an outlet for this water County Road 22 is going to have to be closed to future travel due to the road conditions. This road is an arterial road in Nelson County and would be a large loss to the ag community that uses the road.


The specific project has no interest in draining surface water for any private individuals in this project. The only benefit that the County is concerned about gaining from this project is saving the county road.

While Nelson County intends on cooperating with any requirement from the North Dakota Water Commission, we are pleading for assistance in saving this county road.

Respectfully,

OFFICE OF THE STATES ATTORNEY

By:



Jayne Tenneson

JT/cw

INSTRUCTIONS FOR FILING A SURFACE DRAIN APPLICATION UNDER NORTH DAKOTA CENTURY CODE § 61-32-03

A person seeking to construct a surface drain having a watershed area of 80 acres or more (see Application Guidance below) must submit a completed permit application to the Office of the State Engineer. To be complete, the application must include all information listed below:

1. A completed "Application For Surface Drain" form.
2. A detailed drawing depicting the surface drain's location on an aerial photo. The drawing must include the drain's:
 - a. Location description in Section-Township-Range format.
 - b. Physical footprint of the drain layout including the locations of any, if applicable:
 - i. Ditch and pipe locations,
 - ii. Pump location(s),
 - iii. Placement of fill,
 - iv. Other appurtenant works, including weirs, dikes, control structures, etc.,
 - v. Identification of existing road culverts utilized and descriptions of any proposed culvert additions or modifications.
 - c. A depiction of the flow direction from the outlet location.
3. Any additional information, such as a downstream impact analysis, requested by the Water Resource District or State Engineer from the applicant to make an informed decision on the application.

Is a Permit Required?

North Dakota Century Code § 61-32-03 - Draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres or more, requires a permit from the state engineer and water resource district within which is found a majority of the watershed or drainage area. The determination of the watershed or drainage area must be made using the best available maps or surveys.

For more information on determining watershed and drainage areas,
please visit http://www.swc.nd.gov/reg_approp/drainagepermits/.

Google Maps



Map data ©2018 Google 1000 ft

Tile @ .05%

Tile @ :05%

Natural water course

Open Drain area - Flat in open water



Imagery ©2018 Google, Map data ©2018 Google 1000 ft



**PEARSON
CHRISTENSEN, PLLP**

The Legal Advantage

24 North 4th Street
P.O. Box 5758
Grand Forks, ND 58206-5758

PHONE: (701) 775-0521
FAX: (701) 775-0524

Daniel L. Gaustad
dan@grandforkslaw.com

December 19, 2019

See Attached Mailing Matrix

Re: Nelson County Road 22 Project
Our File #90534.004

RECEIVED

DEC 31 2019

**STATE WATER
COMMISSION**

Dear Parties:

Please find enclosed the following for service upon you:

- Order of the Nelson County, North Dakota Water Resource District Board on Drain Application #5254 – Known as the County Road 22 Drain;
- A diskette containing a transcript of the November 19, 2019 Statewide or Interdistrict Significance Hearing and the exhibits from such hearing; and
- Affidavit of Service.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,


Daniel L. Gaustad

ORDER OF THE
NELSON COUNTY, NORTH DAKOTA WATER RESOURCE DISTRICT BOARD
APPROVING NORTH DAKOTA STATE WATER COMMISSION DRAIN
APPLICATION #5254 – COUNTY ROAD 22 DRAIN

[¶1] An Application for Surface Drain was filed with the Office of State Engineer (the “OSE”). See Exhibit 1 of the Transcript.¹

[¶2] The OSE determined the County Road 22 Project is drainage of statewide or interdistrict significance and therefore the Nelson County Water Resource District Board (“the Board”) set a hearing for November 19, 2019 at 10:30 a.m. in the Nelson County Courthouse, 201 West B Avenue, Lakota, North Dakota. See Exhibit 2 and 3 of the Transcript.

[¶3] The Board, pursuant to N.D.C.C. § 61-32-03 and N.D.A.C. § 89-02-01-09.1 and the time parameters described therein, did publish notice of the November 19, 2019 hearing with the official newspaper of Nelson County and mailed the notice prescribed therein to those parties enumerated in N.D.A.C. § 89-02-01-09.1(1)(a). See Exhibits 3, 4, 5, 6 of the Transcript, Transcript 7:20-10:13.

[¶4] The Board, pursuant to the N.D.C.C. § 61-32-03 and N.D.A.C. § 89-02-01-09.1 did conduct the hearing on November 19, 2019 in the Nelson County Courthouse, 201 West B Avenue, Lakota, North Dakota and the Board did allow submission of all relevant oral or written evidence. See Transcript.

[¶5] Exhibits 1 through 10 were made a part of the hearing without objection. Exhibit 1-10, Transcript 6:24-10:13.

[¶6] Several parties were present at the Board’s November 19, 2019 hearing, as well as representatives of certain state and federal agencies. Parties that spoke or provided evidence are noted in the Transcript.

[¶7] The Board has determined, by virtue of its examination of the proposed County Road 22 Project and review of the data and information received at the November 19, 2019 hearing, that the benefits obtained from constructing the County Road 22 Project include but are not limited to (a) removal of flood waters, which have damaged the road, (b) improvement to the structural integrity of the road, and (c) enhance the safety of a well-traveled road.

[¶8] The Board, after considering information obtained as part of the November 19, 2019 statewide significance hearing and reviewing the exhibits, evaluated the Application in accordance with North Dakota Administrative Code § 89-02-01-09.2.

¹ All references to the “Transcript” shall refer to the proceedings and transcript of the November 19, 2019 Statewide Significance Hearing conducted by the Board.

FROM THE EVIDENCE AND TESTIMONY SUBMITTED AT THE HEARING, THE BOARD'S RATIONALE AND EVALUATION OF THE FACTORS ARE AS FOLLOWS:

1. The volume of water proposed to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained (N.D. Administrative Code § 89-02-01-09.2 (1))

Mr. Herman of KLJ Engineering testified that initial elevation determinations of the drainage area was based on a 2D evaluation. Transcript 13:20-22:4. However, the OSE has identified the area requiring a 3D volume analysis, thereby requiring additional evaluations by KLJ. *Id.* Mr. Herman indicated that upon completion of this additional 3D evaluation, engineering adjustments may be required. *Id.* Mr. Herman testified that whatever the outcome of the 3D volume evaluation, engineering adjustments, if any are needed, would be made in order to comply with the results. *Id.* Mr. Herman predicted that no impact of the watercourse is expected other than possible impacts related to water speed. *Id.*

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

2. Adverse effects that may occur to the lands of downstream landowners. This factor is limited to the project's hydrologic effects such as erosion, flood duration, sustained flows impacts, and downstream water control device operation impacts (N.D. Administrative Code § 89-02-01-09.2 (2)).

Mr. Herman testified that any adverse effects to downstream landowners including hydrological effects, flow impacts, or impacts to downstream control devices are all part of the same calculation required to determine the downstream impacts and flow rate. Transcript 22:5-24:19. A determination is dependent on the total water volume being drained. *Id.* Mr. Herman stated that compliance with the OSE's requirements should result in no adverse downstream hydrological impacts. *Id.* Mr. Herman stated downstream effects must be considered and kept to a minimum. Downstream impacts of the County Road 22 Project will likely be insignificant and have less of an affect than doing a clean-out. *Id.* at 49:11-50:4.

In response to concerns from Jacob Brossart regarding downstream effects on road crossings, Mr. Herman testified that downstream analysis would presumably include a road crossing analysis. Transcript 33:10-34:18 and 43:2-44:37. If an adverse impact was found, Mr. Herman testified it would be mitigated in the engineering design. Transcript 43:2-44:37.

A question was posed by Susan Brossart regarding whether upstream impacts are being evaluated. *See* Transcript 35:6-36:1. Mr. Herman indicated upstream impacts within the drainage basin are being investigated because it would be a contributing factor as to how much water is flowing in the direction of the County Road 22 Project. Transcript 45:12-46:11. However, the drainage impact to the drain which the County Road 22 Project would drain into is not being looked at for upstream impacts because there should be none. *Id.* Mr. Herman

testified that if there are any impacts upstream, there will be impacts downstream, which would then be mitigated. Id. at 45:12-47:11.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

3. The engineering design and other physical aspects of the drain (N.D. Administrative Code § 89-02-01-09.2 (3)).

Mr. Herman testified that the design and physical aspects of the drain may need to be adjusted once a 3D evaluation has been conducted. Transcript 22:23-23:16. Primarily, the elevations may be adjusted but the size of the culvert should remain constant. Id. Mr. Herman described that with a drainage area of over 2,000 acres, an 18-inch culvert will be quite slow at releasing water and therefore does not expect any changes in that respect. Id. Mr. Herman acknowledged that any requirements from the OSE will be complied with and the project would be adjusted accordingly. Id.

In response to another question posed by Jacob Brossart regarding road inslopes, Mr. Herman testified the ditch slope adjacent to the road would have a side slope of 3:1, with a bottom width of three feet, as indicated within the Application. Transcript 44:20-45:11. Such slope specifications comply with County standards and will apply to both the county road and township roads. Id.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

4. The Project's impact on flooding problems in the project watershed (N.D. Administrative Code § 89-02-01-09.2 (4)).

Although the County Road 22 Project will not eliminate all of the flooding issues in this area, Mr. Herman testified that once in compliance with requirements from the OSE, the County Road 22 Project will help alleviate some of the flooding in this area. Transcript 23:17-24:19.

The purpose of the County Road 22 Project is to protect the structural integrity of County Road 22. See Exhibit 1 of the Transcript. Scott Nelson who owns property in the NW¼ of Section 20 in Williams Township, testified that the safety of improving the road is worth the project. Transcript 30:23-33:9.

Allan Anderson also testified in favor of getting the water off the roadway because County Road 22 is the only road that goes through the whole county, north and south. Transcript 36:3-37:13. Likewise, Tom Anderson testified to the importance of saving the road because there is water on the roadway making it too dangerous for everybody. Transcript 42:8-18.

No evidence or testimony was presented that disputed this protective purpose of the County Road 22 Project.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

5. The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values (N.D. Administrative Code § 89-02-01-09.2 (5)).

Assuming compliance with OSE requirements, Mr. Herman testified there should be no impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values. Transcript 24:20-25:5. However, the 3D evaluation would need to be conducted prior to Mr. Herman certifying there would in fact be no impact. Id.

Accordingly, the determination of the Board, after considering the above evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

6. The project's impact on agricultural lands (N.D. Administrative Code § 89-02-01-09.2 (6)).

The only testimony on this factor was from Mr. Herman in which he testified that there should be no impact, beyond a small amount of water that is taken out of the adjacent sloughs. Transcript 25:6-13. There may be a little extra arable land, but Mr. Herman believed that unlikely. Id.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

7. Whether easements are required (N.D. Administrative Code § 89-02-01-09.2 (7)).

Mr. Herman noted easements are assumed to be in process at this point. Transcript 25:14-26:2. It is undetermined if County Road 22 or the township road have an owned right of way and assumes it is all statutory. Id. Mr. Herman presumes an additional easement for the drainage project would be needed. Id.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

8. Other factors unique to the project (N.D. Administrative Code § 89-02-01-09.2 (8)).

The U.S. Corps of Engineers has submitted some correspondence regarding the County Road 22 Project and Mr. Herman states full compliance is intended. Transcript 26:3-13, and Ex. 9 (Bates No. Cty 22 Drain 98-104). Mr. Herman testified KLJ is aware of their concerns and are working to comply with their requirements. Id.

North Dakota Environmental Quality provided correspondence and while Mr. Herman testified he had not reviewed those letters, the intent would be full compliance with this agency's requirements. Transcript 26:14-27, Ex. 7 and 8.

Mr. Herman testified that at this time, additional studies are pending to re-establish the outlet elevation which will dictate the rest of the answers to questions posed in the hearing. Transcript 52:1-8.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

9. Determination of drainage area.

The Board determines, pursuant to N.D.A.C. § 89-02-01-09.2(j), the area to be drained is portions of the E½ of Section 17, the W½ of Section 16, the NE¼ of Section 20 and the NW¼ of Section 21, Township 152, Range 59, Williams Township, Nelson County, North Dakota.

NOW THEREFORE, BASED UPON THE FOREGOING, HAVING INVESTIGATED THE APPLICATION AND COUNTY ROAD 22 PROJECT IN ACCORDANCE TO N.D.C.C. § 61-32-03 AND N.D. ADMINISTRATIVE CODE §§ 89-02-01-09.1 AND 89-02-01-09.2, THE FOLLOWING ORDER OF THE BOARD IS MADE:

A. The Application is **APPROVED ON THE CONDITION** that the requirements, if any, of the U.S. Corps of Engineers, the OSE, the North Dakota Department of Environmental Quality (each of who presented information that is part of the record of the Board's November 19, 2019 hearing), and any other state or federal agency having oversight authority regarding the County Road 22 Drain be complied with.

B. The Board directs and authorizes the Application be completed in accordance with this Order, and this Order be forwarded to all the parties who received notice of the Hearing, being all those required to received the same under N.D. Administrative Code § 89-02-01-09.1.

C. The Board directs and authorizes the Application, a copy of this Order and the Transcript, with all exhibits thereto, being all the information reviewed by the Board in considering the Application be forwarded to the OSE within twenty (20) days.

¶35] The Board directs and authorizes the Application be completed in accordance with this Order, and this Order be forwarded to all the parties who received notice of the Hearing, being all those required to received the same under N.D. Administrative Code § 89-02-01-09.1.

¶36] The Board directs and authorizes the Application, a copy of this Order and the Transcript, with all exhibits thereto, being all the information reviewed by the Board in considering the Application be forwarded to the OSE within twenty (20) days.

¶37] DATED the 18 day of December, 2019.

Nelson County Water Resource District Board



By: Ben Varnson

Its: Chairman

NOTICE

¶38] THIS ORDER APPROVING THE APPLICATION IS NOT A PERMIT TO DRAIN UNTIL THE STATE ENGINEER APPROVES THE APPLICATION.

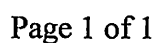
[illegible]

➤ **Order of the Nelson County, North Dakota Water Resource District Board on Drain Application #5254 – Known as the County Road 22 Drain**

➤ See Attached Mail Listing

Ella Braaten
Ella Braaten


Notary Public for the State of North Dakota



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715 13th Ave NE, Apt 203
Devils Lake, ND 58301

Robert Anderson
P.O. Box 275
Michigan, ND 58259

Scott Nelson
4414 109th St. NE
Lakota, ND 58344

Janet Anderson / Janet Solar
2735 15th Ave
Marion, IA 52302-1802

Geritz Farm
C/O First Western Bank & Trust
P.O. Box 1090
Minot, ND 58702

Benson County Auditor
P.O. Box 206
Minnewaukan, ND 58351

Paulette Anderson
2711-A NC Hwy #96
Franklinton, NC 27525

Have Only Positive Expectations,
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Vicki Cookman
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Rock Lake, ND 58365

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11/19/2019

<p>1 2 3 4 5 6 IN RE: Application for Surface Drain #5254 7 8 9 10 11 12 13 14 15 Taken Before: Nelson County Water Resource District 16 17 18 19 20 Taken At: Nelson County Courthouse 21 Community Room 22 210B Avenue West 23 Lakota, North Dakota 24 25 Taken By: Joy Filipski, Court Reporter</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">I N D E X</p> <p>3 EXHIBITS</p> <p>4 No. 1 -- Application for Surface Drain #5254</p> <p>5 No. 2 -- 9-6-19 Letter</p> <p>6 No. 3 -- Notice of Hearing</p> <p>7 No. 4 -- 10-28-19 Letters</p> <p>8 No. 5 -- Affidavit of Service</p> <p>9 No. 6 -- Affidavit of Publication</p> <p>10 No. 7 -- 11-7-19 Letter</p> <p>11 No. 8 -- 11-13-19 Letter</p> <p>12 No. 9 -- Nelson County Auditor File</p> <p>13 No. 10 -- 11-1-19 E-mail with Attachments</p> <p>14 No. 11 -- Two-Page Sign-Up Sheet</p>
<p>1 A p p e a r a n c e s : 2 3 Nelson County Water Resource District: 4 Ben Varnson, Chair 5 David Sateren 6 Todd Whitman 7 Charlene Varnson 8 9 For Nelson County Water Resource District: 10 PEARSON CHRISTENSEN, PLLP 11 P.O. Box 5758 12 Grand Forks, North Dakota 58206-5758 13 By: DANIEL L. GAUSTAD, ATTORNEY AT LAW 14 AND 15 ELLA BRAATEN, ATTORNEY AT LAW 16 17 For Nelson County Commissioners: 18 KLJ 19 Anthony Herman, P.E. 20 Paul Bjornson 21 P.O. Box 1077 22 Devils Lake, North Dakota 58301 23 24 Note: Also present are people attending the 25 hearing (Please see Sign-up Sheets)</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">4</p> <p>(Whereupon, the following proceedings were had to-wit:</p> <p>MR. GAUSTAD: All right. We're going to call this, I guess this hearing to order.</p> <p>My name is Dan Gaustad, I represent the Nelson County Water Board.</p> <p>Next to me is Ella Braaten, she's an associate in my office.</p> <p>Next to, to me is Ben Varnson, Todd Whitman, David Sateren and Charlene Varnson, all with the Nelson County Water Board.</p> <p>Before we go on, there is a sign-up sheet, we're asking that everybody sign in.</p> <p>Can you pass that around?</p> <p>MR. HERMAN: Absolutely.</p> <p>MR. GAUSTAD: A couple of things, procedural points.</p> <p>I trust most of you haven't been a party to a, a hearing like this.</p> <p>What we're going to do is, first, we're going to open it up to the Applicant, which is Nelson County, to present whatever information that they want to present.</p>

<p style="text-align: center;">5</p> <p>1 Today is the date for those 2 interested in this particular project, I'm 3 calling it the County Road 22 Drain Project, to 4 present testimony, evidence, documentary 5 evidence or oral testimony, okay.</p> <p>6 It's not the day to cross-examine 7 people. It's to present whatever information 8 you may have that would assist the, the Nelson 9 County Water Board to make a determination on 10 whether to approve or not approve the drain 11 permit.</p> <p>12 What we'll do is, like I said, 13 we'll start with the Applicant first, Nelson 14 County, because they're the Applicant on the 15 drain permit.</p> <p>16 Then we will, I'll go down, and 17 there's a, a number of named governmental 18 entities that we're required to provide Notice, 19 we'll allow them to speak.</p> <p>20 Then those that, individuals that 21 received Notice, if those folks are here, they 22 can present their evidence.</p> <p>23 Any others that are in attendance 24 because of the public Notice, they may not have 25 received a specific Notice, but they're here</p>	<p style="text-align: center;">7</p> <p>1 the record, and I'll explain what they are and 2 we'll go through each of the documents. I 3 don't have a copy for everybody today.</p> <p>4 The first will be Exhibit 1, which 5 is the Application for Surface Drain that was 6 submitted by Nelson County to the State 7 Engineer's Office. That'll be Exhibit 1.</p> <p>8 Exhibit 2 is a letter dated 9 September 6, 2019, from the, the State 10 Engineer, Garland Erbele, I think that's how -- 11 MR. MAGER: Eberle, -- 12 MR. GAUSTAD: -- you pronounce 13 it, -- 14 MR. MAGER: -- yep. 15 MR. GAUSTAD: -- okay, -- 16 MR. HERMAN: Yep. 17 MR. GAUSTAD: -- with various 18 attachments. That's -- Exhibit 2 is Bates 19 stamped County 22 Drain 3 through 13. 20 Exhibit 3 is the Notice of 21 Statewide Significance, the Notice that was 22 sent out and that was published in the paper, 23 that'll be Exhibit 3, and that's Bates stamped 24 County 22 Drain 14 and 15. 25 Exhibit 4 is a compilation of the</p>
<p style="text-align: center;">6</p> <p>1 because we published Notice, we'll let them 2 speak.</p> <p>3 And then we'll turn it, once that's 4 completed, we'll turn it back to the Applicant, 5 Nelson County, and they can provide whatever 6 kind of rebuttal type of evidence they have.</p> <p>7 And at that point the hearing will, 8 will end.</p> <p>9 I can tell you that the Board will 10 not be making a decision today. They'll 11 receive the information and make a decision 12 later on, okay.</p> <p>13 A couple of things that we need to 14 be mindful of is, one, only one person can talk 15 at a time.</p> <p>16 We've got a court reporter here to 17 take everything down and if there are multiple 18 people talking, she can't get it down properly, 19 okay.</p> <p>20 Second, speak as loudly as you 21 possibly can so that the court reporter can 22 hear you and the rest of the folks can hear you 23 as well, okay.</p> <p>24 Before we go on, there is some, 25 some documents that I want to be made part of</p>	<p style="text-align: center;">8</p> <p>1 letters that were sent out by my office to 2 various parties providing them Notice of 3 today's hearing. Exhibit 4 is Bates stamped 4 County 22 Drain 16 through 56.</p> <p>5 Exhibit 5 is an Affidavit of 6 Service by mail that notes who received the 7 Notice of the, of the hearing by mail, okay. 8 That's -- Exhibit 5 is Bates stamped County 22 9 Drain 57, Pages 57 through 59.</p> <p>10 Exhibit 6 will be the Affidavit of 11 Publication. This is the Notice of today's 12 hearing that was published in, in the paper. 13 And it notes when it was published, on October 14 31 and November 7 of 2019. That's Bates 15 stamped County 22 Drain 60.</p> <p>16 And a Bates stamp is just the 17 number in the lower right-hand corner to, kind 18 of a page numbering system.</p> <p>19 Exhibit 7 is a letter dated 20 November 7, 2019, from L. David Glatt, he's the 21 Director for the North Dakota Department of 22 Environmental Quality, making comments 23 regarding the project. And that's Exhibit 7 24 and that's Bates stamped County 22 Drain 61 25 through 63.</p>

<p style="text-align: center;">9</p> <p>1 Exhibit 8 is another letter, this 2 is dated November 13, 2019, from Peter Wax. 3 He's an environmental scientist with the 4 Division of Water Quality with the North Dakota 5 Environmental Quality Department. And that's 6 Exhibit 8. And that's Bates stamped County 22 7 Drain and it's Bates stamped number 64. 8 Next exhibit is Exhibit 9. These 9 are documents that were received from the 10 County Auditor, which is the file regarding 11 this particular drain that are received from 12 the County Auditor on November 14. It's all 13 the documents they had compiled and they had 14 kept in their file regarding this particular 15 drain that would have been available for public 16 inspection. 17 Those documents are Bates stamped 18 County 22 Drain and it's Bates stamped 65 19 through 196. 20 And then the last exhibit is 21 Exhibit 10. This would have been documents 22 that the County Auditor had provided to the 23 Water Board regarding this project. I think 24 there's duplication. In fact, I know there's 25 duplication.</p>	<p style="text-align: center;">11</p> <p>1 County. Is that correct? 2 MR. HERMAN: Yep. 3 MR. GAUSTAD: Okay. 4 MR. HERMAN: Okay. All right. 5 So -- 6 MR. GAUSTAD: If you could just 7 state your name. 8 MR. HERMAN: Anthony Herman. 9 MR. GAUSTAD: Okay. Thank you. 10 MR. HERMAN: Let's see, where do I 11 want to start. 12 It became known to the County that 13 County Road 22 was sig -- was facing some 14 significant, significant drainage issues, 15 primarily with the structural stability of the 16 road. It resulted from the adjacent sloughs. 17 We were also made aware that the 18 township roads right to the south was also 19 suffering some significant issues. 20 That was kind of the genesis of, of 21 the permit application. 22 Some construction did take place 23 and the, the permit was then started. 24 And that permit was based on the 25 constructed plans of what had already taken</p>
<p style="text-align: center;">10</p> <p>1 The items in Exhibit 10 also appear 2 in Exhibit 9. But just for clarity purposes, 3 these are documents that were supplied on 4 November 1 of 2019 to the Water Board from the, 5 from the County Auditor and Exhibit 10 is Bates 6 stamped County 22 Drain 197 through 214. 7 So does anybody have any objection 8 to those Exhibits being part of the record for 9 today's hearing? 10 Anybody have any objection? 11 All right. Hearing none, all of 12 those will be made part of the record for 13 today's hearing. 14 All right. I guess at this point 15 we will turn it over to the Applicant and they 16 can make their presentation. 17 Be mindful that you got a court 18 reporter here, so don't talk too fast, so she 19 can get it down, but -- 20 And if there are documents that, 21 that you intend to present, let me know and 22 we'll need to mark those as an Exhibit for 23 today's hearing, okay. 24 I'll turn it over to the County and 25 I understand KLJ will be presenting for the</p>	<p style="text-align: center;">12</p> <p>1 place. 2 And the permit itself basically has 3 the, the plans or the approach detailed out in 4 it. 5 And that approach is to mimic 6 what's called a snag and clear operation in 7 what would have been the natural drain of the 8 project. 9 And the County decided that rather 10 than going up to (indicating) the, the natural 11 outlet of the slough complex and doing a snag 12 and clear there, that they would do something 13 that would be a little bit easier to maintain 14 and a little bit more direct to do (indicating) 15 a drainage through the ditches of the adjacent 16 county road and along with the, the township 17 road going off to the west there. 18 MR. GAUSTAD: What county roads are 19 you referring to? 20 MR. HERMAN: That is -- let me zoom 21 in real quick. 22 That is County Ro -- or -- County 23 Road 22. And the township road is 39th Street 24 Northeast. 25 MR. GAUSTAD: 22 runs north and</p>

<p style="text-align: center;">13</p> <p>1 south or --</p> <p>2 MR. HERMAN: 22 runs north and</p> <p>3 south, it is also known as 110th Ave.</p> <p>4 Northeast.</p> <p>5 MR. GAUSTAD: And what's the</p> <p>6 township road again?</p> <p>7 MR. HERMAN: And the township road</p> <p>8 is 39th Street Northeast.</p> <p>9 And this is all bordering the south</p> <p>10 and west -- or south and east lines of Section</p> <p>11 17.</p> <p>12 Let's see here.</p> <p>13 The, the drain is composed of both</p> <p>14 open channel and 18-inch culvert. The total</p> <p>15 drain length is approximately 11,000 feet, of</p> <p>16 linear feet. And roughly 6,000 of those linear</p> <p>17 feet is going to be 18-inch culvert buried.</p> <p>18 MR. GAUSTAD: Why? Why did you</p> <p>19 have to do the buried culvert?</p> <p>20 MR. HERMAN: So buried culvert is</p> <p>21 because the topography in the area does not</p> <p>22 allow for deep enough cuts.</p> <p>23 And it fra -- frankly is, is more</p> <p>24 economical to do the, the culvert rather than</p> <p>25 cutting very deep and running the safety issues</p>	<p style="text-align: center;">15</p> <p>1 Our current approach, or I guess</p> <p>2 prior to this last week, was to set the inlet</p> <p>3 elevation of the pipe network, so the last,</p> <p>4 the, the last step of the process before it</p> <p>5 goes into the, the pipe network and does not</p> <p>6 have any more open channel, or the end of the</p> <p>7 open channel, was to set that invert elevation</p> <p>8 to the same elevation as what would have been</p> <p>9 the naturally drained outlet elevation. And</p> <p>10 this is a cleaned-out condition of the natural</p> <p>11 outlet.</p> <p>12 We did run into a complication with</p> <p>13 that, namely, on the interpretation of the</p> <p>14 State Water Commission's two items that they</p> <p>15 would not allow and so additional study is</p> <p>16 needed at this point to figure out what</p> <p>17 elevations the southern slough here actually</p> <p>18 does connect into this northern slough in</p> <p>19 Section 17.</p> <p>20 There is two identified areas that</p> <p>21 are areas of concern. One is the likely</p> <p>22 outlet, the other is a likely secondary outlet,</p> <p>23 they're very close in elevation, so both would</p> <p>24 likely need to be studied.</p> <p>25 But those would set the outlet</p>
<p style="text-align: center;">14</p> <p>1 with the road or purchasing additional right of</p> <p>2 way.</p> <p>3 And so you'll see on the, the, the</p> <p>4 overall plans in the permit application that</p> <p>5 the, the buried pipe is through areas that are,</p> <p>6 are either significantly deep cuts or just too</p> <p>7 close to the road to stay within the, the right</p> <p>8 of way allotted.</p> <p>9 The areas through the slough,</p> <p>10 primarily in the southern southwest -- or,</p> <p>11 sorry, southeast corner of Section 17, those</p> <p>12 are the, predominantly the area where the, the</p> <p>13 open channel is. And that is done so that we</p> <p>14 do not disturb that slough more than necessary.</p> <p>15 As it currently sits, the project</p> <p>16 is, is somewhere in the neighborhood of three,</p> <p>17 three-quarters complete.</p> <p>18 So we do have pipe in the ground.</p> <p>19 And most of the pipe is solid pipe.</p> <p>20 There are sections, however, of, of perforated</p> <p>21 drain tile pipe. However, those sections have</p> <p>22 been significantly restricted or removed and</p> <p>23 replaced with solid pipe. And that was to</p> <p>24 reduce or eliminate the lateral effects of</p> <p>25 drainage.</p>	<p style="text-align: center;">16</p> <p>1 elevation that would be allowed for this second</p> <p>2 slough to then abide by the State Water</p> <p>3 Commission's two requirements of no additional</p> <p>4 drainage to the Devils Lake Basin and no</p> <p>5 draining of a slough beyond its natural outlet</p> <p>6 elevation.</p> <p>7 So that is where the project sits,</p> <p>8 more or less, right now.</p> <p>9 We are at a standstill with the</p> <p>10 outlet elevation still being determined, but</p> <p>11 that total downstream outlet elevation is, is</p> <p>12 already set.</p> <p>13 And that was communicated already</p> <p>14 to the, to the, to the Commission and, and to</p> <p>15 the Water Board as such.</p> <p>16 MR. GAUSTAD: Okay. So I want to</p> <p>17 make sure I understand and I, just for my own</p> <p>18 edification, is that the State Engineer or</p> <p>19 State Water Commission is asking you to review</p> <p>20 your outlet elevation further?</p> <p>21 MR. HERMAN: Correct.</p> <p>22 The, the two, the two items that</p> <p>23 the State Water Commission had said on their, I</p> <p>24 believe it's your Exhibit 2, is the letter</p> <p>25 from, dated September 6, from the North Dakota</p>

<p style="text-align: center;">17</p> <p>1 Be Legendary, State Engineer. Titled, Surface 2 Drain Permit Application No. 5254.</p> <p>3 And it says, the OSE will not issue 4 a permit if the District's or OSE's elevation 5 of the Application and project yields, 6 additional watershed area contributing to 7 Devils Lake or Stump Lake or additional water 8 being drained below the natural outlet of the 9 slough complex.</p> <p>10 And the, the roadblock became an 11 issue on that first item, additional watershed 12 being contribu -- or area contributing to 13 Devils Lake or Stump Lake, had previously been 14 understood as a 2D area, i.e., a surface area.</p> <p>15 However, the, and the OSE provided 16 insight on that this last week, or I believe it 17 was the end of the previous week, basically 18 saying that that area or that watershed area is 19 in fact a 3D volume, which is what triggered 20 the investigation into the secondary outlet.</p> <p>21 Because at the outlet elevation 22 that was discovered or established for the 23 total slough area, these sloughs are no longer 24 connected at that outlet elevation.</p> <p>25 And so if we were to drain through</p>	<p style="text-align: center;">19</p> <p>1 MR. HERMAN: But the, the State 2 Water Commission's primary concern was, if we 3 take our roughly 10 inches off of this main, 4 this upper slough area, with this primary 5 outlet, and we happen to drain through this 6 other slough area, that 10 inches has to be 7 either shown that it's equivalent for both 8 sloughs or we have to take the higher or lesser 9 water volume of the two, or I guess it'd be 10 the, the higher elevation of the two outlets.</p> <p>11 So if this outlet in the middle 12 here does come up higher, and we still would 13 like to do an open channel through this 14 southern slough, we will have to use this 15 outlet elevation, rather than our previous 16 outlet elevation, and that's because we cannot 17 add additional water to the drainage basin 18 beyond what would naturally flow out.</p> <p>19 MR. GAUSTAD: So after you do the 20 3D evaluation, you may have to adjust your 21 engineering to account for --</p> <p>22 MR. HERMAN: Correct.</p> <p>23 MR. GAUSTAD: -- this additional 24 volume?</p> <p>25 MR. HERMAN: Our, our --</p>
<p style="text-align: center;">18</p> <p>1 this southern slough with an open channel, we 2 would effectively be adding that difference in 3 elevations to that drainage area. We'd be 4 adding that additional water to the basin.</p> <p>5 And that was the State Water 6 Commission's or the OSE's concern, was that 7 that has to be validated or engineered around.</p> <p>8 MR. GAUSTAD: Okay. So you did 9 your evaluation under this surface or 2D 10 evaluation and the --</p> <p>11 MR. HERMAN: Yep.</p> <p>12 MR. GAUSTAD: -- Office of the 13 State Engineer is saying you needed the, you 14 need to do a 3D --</p> <p>15 MR. HERMAN: Correct.</p> <p>16 MR. GAUSTAD: -- evaluation?</p> <p>17 And that, and that, and once you do 18 those different 2D or 3D, what, what are you 19 calculating?</p> <p>20 MR. HERMAN: So we're calculating 21 total volume of water, but more importantly, 22 also the flow rate of that water. Basically, 23 what sort of, what sort of drainage speed 24 should we be expecting.</p> <p>25 MR. GAUSTAD: Okay.</p>	<p style="text-align: center;">20</p> <p>1 MR. GAUSTAD: And that would 2 make --</p> <p>3 MR. HERMAN: -- initial assumption 4 was that our volume of water is going to be 5 based on the 3D area of these two spaces, 6 assuming they were one; whereas, in that first 7 item that the State mentions, they don't agree 8 that this is necessarily one slough, slough 9 complex.</p> <p>10 MR. GAUSTAD: Okay.</p> <p>11 MR. HERMAN: So we actually have to 12 verify that it is either one slough complex so 13 we can use one outlet elevation or else we have 14 to use the, the higher of the two.</p> <p>15 MR. GAUSTAD: So the intent would 16 be, whatever the outcome is of the 3D, you will 17 make whatever engineering adjustments need to 18 be made for this particular project?</p> <p>19 MR. HERMAN: Correct.</p> <p>20 MR. GAUSTAD: Okay.</p> <p>21 Okay. So, sitting here today, do 22 you know -- you know what the water volume 23 proposed to be drained under the 2D evaluation, 24 right?</p> <p>25 MR. HERMAN: No, that, that</p>

<p style="text-align: center;">21</p> <p>1 analysis hasn't been done because there's no 2 purpose in figuring out a volume for a 2D 3 area --</p> <p>4 MR. GAUSTAD: Okay.</p> <p>5 MR. HERMAN: -- until you have the 6 3 -- or until you have the 2D area set.</p> <p>7 Which, in this case, that is what 8 is, is under investigation.</p> <p>9 MR. GAUSTAD: Okay. But the State 10 Engineer is, is telling you that there can't be 11 any more water volume contributed to Devils 12 Lake, --</p> <p>13 MR. HERMAN: Exactly.</p> <p>14 MR. GAUSTAD: -- correct?</p> <p>15 MR. HERMAN: Beyond what would have 16 naturally flowed in a cleaned-out situation.</p> <p>17 MR. GAUSTAD: Okay. And, and that 18 would be the same -- do you know, then, would 19 that be the same with respect to any impact of 20 the watercourse in which the water will be 21 drained? There, there wouldn't be any impact 22 then, right, if, if you're complying with what 23 the State Engineer is asking?</p> <p>24 MR. HERMAN: We would expect no 25 impacts, other than possibly impacts related to</p>	<p style="text-align: center;">23</p> <p>1 this 3D evaluation, correct?</p> <p>2 MR. HERMAN: Correct.</p> <p>3 We'll be adjusting the, the 4 elevations primarily.</p> <p>5 The size of culvert is assumed to 6 be main -- remain constant.</p> <p>7 But at this point, with a drainage 8 area of over 2,000 acres, -- I guess I could 9 throw that up quick.</p> <p>10 A, a drainage area of, of over 11 2,000 acres, an 18-inch culvert will be quite 12 slow --</p> <p>13 MR. GAUSTAD: Okay.</p> <p>14 MR. HERMAN: -- at releasing that 15 water, so we don't anticipate any changes in 16 that respect.</p> <p>17 MR. GAUSTAD: What about, again, 18 assuming -- and, and you -- if I'm hearing you 19 right, and I think the Board's hearing you 20 right, you'll do what the State Engineer is 21 telling you to do and then adjust the, the, the 22 project accordingly?</p> <p>23 MR. HERMAN: Absolutely.</p> <p>24 MR. GAUSTAD: Okay. And so once 25 you do that, and that, that's the premise of my</p>
<p style="text-align: center;">22</p> <p>1 water speed.</p> <p>2 And that is why we will ac -- 3 with -- that is why we are investigating the, 4 the total flow rate of the drainage as well.</p> <p>5 MR. GAUSTAD: Okay. What about any 6 adverse effects to downstream landowners, 7 accounting for what the State Engineer is 8 asking you to do? What type of hydrological 9 effects will there be as far as erosion, flow 10 impacts or sustained flow impacts or any 11 impacts to downstream control devices?</p> <p>12 MR. HERMAN: That is part of that 13 same calculation of figuring out downstream 14 impacts, along with the flow rate.</p> <p>15 It's all dependent on the total 16 water volume being drained or being let loose 17 and the, the, the rate at which it does so.</p> <p>18 MR. GAUSTAD: So if you comply with 19 what the State Engineer is saying, is there 20 going to be any hydrological impacts 21 downstream?</p> <p>22 MR. HERMAN: There should not.</p> <p>23 MR. GAUSTAD: Okay.</p> <p>24 And the design and physical aspects 25 of the drain will also be adjusted once you do</p>	<p style="text-align: center;">24</p> <p>1 questions now, --</p> <p>2 MR. HERMAN: Uh-huh.</p> <p>3 MR. GAUSTAD: -- okay, is that once 4 you do that, what's the impact of the flooding 5 problems in this, with respect to the 6 watershed, the project watershed, do you know?</p> <p>7 MR. HERMAN: It, it should 8 alleviate the pro -- the, the flooding issues. 9 We can't say for certain at this point that it 10 will completely get rid of them, based on 11 unknown flow rates yet. But our assumption at 12 this point is, is that it will improve the 13 project area significantly.</p> <p>14 MR. GAUSTAD: And that's County 15 Road 22 and --</p> <p>16 MR. HERMAN: That is --</p> <p>17 MR. GAUSTAD: -- this township --</p> <p>18 MR. HERMAN: -- County Road 22, 19 along with the township road alongside.</p> <p>20 MR. GAUSTAD: What about, again, 21 assuming you, you follow what the State 22 Engineer's asking, what impact on, will there 23 be on ponds, sloughs, streams or lakes that 24 have recognized fish and wildlife values?</p> <p>25 MR. HERMAN: We should have no</p>

<p style="text-align: center;">25</p> <p>1 impact on those, although, I cannot certify 2 that at this time. 3 MR. GAUSTAD: Okay. Until you've 4 done your evaluation? 5 MR. HERMAN: Correct. 6 MR. GAUSTAD: What about impact on 7 agricultural lands? 8 MR. HERMAN: Again, we should have 9 no impact on that, beyond the little bit of 10 water that we do take out of the adjacent 11 sloughs. 12 We might see a little extra arable 13 land there, but I wouldn't count on it. 14 MR. GAUSTAD: Okay. Do you know if 15 there would be any easements that will be 16 required? 17 MR. HERMAN: Yes. Easements are 18 assumed to be in process at this point. 19 Right now, it is undetermined if 20 County Road 22 or the township road have any, 21 have any actual right of, owned right of way. 22 At this point it's assumed that it's all 23 statutory. 24 And for statutory right of way, we 25 would assume that you would have need or you</p>	<p style="text-align: center;">27</p> <p>1 project? 2 MR. HERMAN: None at this time. 3 MR. GAUSTAD: Okay. Very good. 4 The next party that we'll ask if 5 there's a representative from the North Dakota 6 State Game & Fish Department? 7 And they're not here. 8 How about the North Dakota 9 Department of Health? 10 The North Dakota Department of 11 Transportation? 12 They're not present. 13 I do know that the State Engineer's 14 Office is here. Would you -- 15 MR. MAGER: Correct. 16 MR. GAUSTAD: -- like to -- 17 MR. MAGER: There's no comments at 18 this time. 19 MR. GAUSTAD: And your name is? 20 MR. MAGER: Brian Mager, for the 21 record. 22 MR. GAUSTAD: Okay. And just so 23 that -- what's your position with the State 24 Engineer's Office? 25 MR. MAGER: So Water Resource</p>
<p style="text-align: center;">26</p> <p>1 would need an, an additional easement for the 2 drainage project itself. 3 MR. GAUSTAD: Okay. And I 4 understand the U.S. Corps of Engineers has at 5 least submitted some correspondence regarding 6 this project. What's the intention of the 7 Applicant with respect to complying with the, 8 the Corps of Engineers? 9 MR. HERMAN: Full compliance with 10 them. 11 MR. GAUSTAD: Okay. 12 MR. HERMAN: We're aware of their, 13 of their concerns and we are working on them. 14 MR. GAUSTAD: Okay. What about, 15 and there was a couple of letters that we got 16 from the North Dakota Environmental Quality, I 17 don't know if you've had a chance to review 18 those, but to the extent that that agency has 19 any requirements, what's the intention of the 20 Applicant to comply with those requirements? 21 MR. HERMAN: The intent is 22 compliance, however, I have not reviewed those, 23 those letters as of yet. 24 MR. GAUSTAD: Okay. Anything else 25 that you want to add, anything regarding this</p>	<p style="text-align: center;">28</p> <p>1 Engineer in the regulatory division for the 2 Office of the State Engineer. 3 MR. GAUSTAD: Okay. And you have 4 no comments? 5 MR. MAGER: No comments at this 6 time. 7 MR. GAUSTAD: Okay. Thank you. 8 Is there a representative from the 9 Natural Resource Conservation Service? 10 None. 11 How about, is there a 12 representative from Ramsey County Water Board? 13 None. 14 How about from Ramsey County? 15 None. 16 Benson County Water Board? 17 None. 18 Benson County? 19 Nobody. 20 Eddy County Water Board? 21 No one. 22 Eddy County? 23 Okay. 24 Devils Lake Joint Water Resource 25 Board?</p>

<p style="text-align: center;">29</p> <p>1 Not present.</p> <p>2 Central Township in Nelson County,</p> <p>3 is there a representative from Central</p> <p>4 Township?</p> <p>5 How about Dodds Township, in Nelson</p> <p>6 County, is there a representative that wants to</p> <p>7 make any comments?</p> <p>8 How about, I don't know if I'm</p> <p>9 going to pronounce this right, Wamduska</p> <p>10 Township? Did I pronounce that right?</p> <p>11 MR. BREKKEN: Uh-huh.</p> <p>12 MR. VARNSON: Close enough.</p> <p>13 MR. GAUSTAD: Close enough?</p> <p>14 Yes.</p> <p>15 And your name?</p> <p>16 MR. BREKKEN: Clifford Brekken.</p> <p>17 MR. GAUSTAD: Okay. And you're a</p> <p>18 representative with the Township Board?</p> <p>19 MR. BREKKEN: I'm the township</p> <p>20 supervisor.</p> <p>21 MR. GAUSTAD: Okay. Could you</p> <p>22 stand up, just -- do you, do you have any</p> <p>23 comments you want to make?</p> <p>24 MR. BREKKEN: No, I'm just here to</p> <p>25 observe.</p>	<p style="text-align: center;">31</p> <p>1 stand, make any comments?</p> <p>2 MR. NELSON: Yes, I guess the, the</p> <p>3 tile goes through two different quarters of</p> <p>4 mine.</p> <p>5 I don't see any deleterious effects</p> <p>6 to my land whatsoever.</p> <p>7 And as a land -- or a patron or, or</p> <p>8 citizen of the area, certainly the safety of,</p> <p>9 of improving the road, you know, I believe is,</p> <p>10 is worth the project.</p> <p>11 MR. GAUSTAD: And what -- the</p> <p>12 property that you own in this area, can you</p> <p>13 give the legal description?</p> <p>14 MR. NELSON: Yeah, it would be the</p> <p>15 northwest quarter of 20. So just (indicating)</p> <p>16 to the left of that yellow line.</p> <p>17 Northwest quarter.</p> <p>18 MR. HERMAN: Oh.</p> <p>19 MR. GAUSTAD: Of 20?</p> <p>20 MR. NELSON: Of 20, yeah.</p> <p>21 MR. GAUSTAD: Okay.</p> <p>22 MR. NELSON: So --</p> <p>23 MR. GAUSTAD: And we're all in, I</p> <p>24 can't remember what township we're in.</p> <p>25 MR. VARNSON: Williams.</p>
<p style="text-align: center;">30</p> <p>1 MR. GAUSTAD: Okay, very good.</p> <p>2 Thank you.</p> <p>3 Did you get the name?</p> <p>4 How about from Williams Township?</p> <p>5 Any representative from Williams Township?</p> <p>6 Do you want to stand up?</p> <p>7 And your name?</p> <p>8 MR. FRANZEN: Bill Franzen.</p> <p>9 MR. GAUSTAD: Okay. And do you</p> <p>10 have any comments regarding the project?</p> <p>11 MR. FRANZEN: I, I don't, I'm</p> <p>12 just --</p> <p>13 MR. GAUSTAD: Okay.</p> <p>14 MR. FRANZEN: -- observing.</p> <p>15 MR. GAUSTAD: Very good.</p> <p>16 All right. I'm going to go through</p> <p>17 a list of individuals that received letters and</p> <p>18 if they want to stand and, and present any</p> <p>19 evidence, we ask them to do so.</p> <p>20 Is Rose Anderson here?</p> <p>21 No.</p> <p>22 Robert Anderson?</p> <p>23 Scott Nelson?</p> <p>24 MR. NELSON: Yep.</p> <p>25 MR. GAUSTAD: Yes. Do you want to</p>	<p style="text-align: center;">32</p> <p>1 MR. GAUSTAD: Williams --</p> <p>2 MR. NELSON: Williams --</p> <p>3 MR. GAUSTAD: -- Township.</p> <p>4 MR. NELSON: -- Township, yeah.</p> <p>5 MR. GAUSTAD: Okay.</p> <p>6 MR. NELSON: So it'd be the</p> <p>7 northwest quarter of 20 and the northeast</p> <p>8 quarter of 19.</p> <p>9 MR. GAUSTAD: Okay.</p> <p>10 Anything else?</p> <p>11 MR. NELSON: No.</p> <p>12 MR. GAUSTAD: Thank you.</p> <p>13 How about Janet Anderson or Janet</p> <p>14 Solar?</p> <p>15 Geritz Farm, is there a</p> <p>16 representative from Geritz Farm here?</p> <p>17 No.</p> <p>18 Paulette Anderson?</p> <p>19 No, not present.</p> <p>20 Anybody from an entity called Have</p> <p>21 Only Positive Expectations, LLLP?</p> <p>22 MR. NELSON: That's me as well.</p> <p>23 MR. GAUSTAD: Oh, okay.</p> <p>24 MR. NELSON: That's actually the</p> <p>25 owner of that land --</p>

<p style="text-align: right;">33</p> <p>1 MR. GAUSTAD: Okay.</p> <p>2 MR. NELSON: -- I just talked</p> <p>3 about.</p> <p>4 MR. GAUSTAD: And --</p> <p>5 MR. NELSON: It's, it's mine as</p> <p>6 well.</p> <p>7 MR. GAUSTAD: That's Scott Nelson</p> <p>8 speaking.</p> <p>9 MR. NELSON: Yes.</p> <p>10 MR. GAUSTAD: Jacob Brossart. I</p> <p>11 see that he's present. Do you have any</p> <p>12 comments regarding the project?</p> <p>13 MR. JACOB BROSSART: Does this --</p> <p>14 MR. GAUSTAD: Can you stand up</p> <p>15 and --</p> <p>16 MR. JACOB BROSSART: There's, now</p> <p>17 you say there's going to be further study done</p> <p>18 to make sure that the water that's coming</p> <p>19 through won't have any adverse effects to</p> <p>20 downstream?</p> <p>21 MR. GAUSTAD: I think that the, the</p> <p>22 way it's, the, the State Engineer is asking the</p> <p>23 Applicant to do a further analysis based upon a</p> <p>24 3D volume analysis versus a 2D volume analysis.</p> <p>25 MR. JACOB BROSSART: And would that</p>	<p style="text-align: right;">35</p> <p>1 thank you.</p> <p>2 Susan Brossart, do you have any</p> <p>3 comment?</p> <p>4 MS. SUSAN BROSSART: Yes, I do.</p> <p>5 MR. GAUSTAD: Okay.</p> <p>6 MS. SUSAN BROSSART: Any upstream</p> <p>7 effect being done? What's coming from way up</p> <p>8 north?</p> <p>9 MR. GAUSTAD: That I don't know.</p> <p>10 And what areas are you, are you</p> <p>11 referring to?</p> <p>12 Do you have like a description or</p> <p>13 just --</p> <p>14 MS. SUSAN BROSSART: Well, just</p> <p>15 every -- anything that's, that's flowing into</p> <p>16 that northeast Stump Lake drain, is anything</p> <p>17 from up north going to be affected in coming</p> <p>18 down from there that's flooding?</p> <p>19 MR. GAUSTAD: And I'm, and I'm not</p> <p>20 following. You're saying, because of the</p> <p>21 project, is it going to be impacted or --</p> <p>22 MS. SUSAN BROSSART: Yes.</p> <p>23 MR. GAUSTAD: Okay.</p> <p>24 That I don't know.</p> <p>25 Any other comment?</p>
<p style="text-align: right;">34</p> <p>1 include like road openings downstream to verify</p> <p>2 that they're large enough or won't adversely</p> <p>3 affect them?</p> <p>4 MR. GAUSTAD: I don't know.</p> <p>5 And maybe we'll have the Applicant,</p> <p>6 if you could put that down to, to, to answer?</p> <p>7 Any other comment, Mr. Brossart?</p> <p>8 MR. JACOB BROSSART: Now, when the</p> <p>9 adjoin -- open ditches are put in, will the</p> <p>10 slopes of the road be acquired to like a State</p> <p>11 standard or are they just going to be left as</p> <p>12 they are now?</p> <p>13 MR. GAUSTAD: Don't know that</p> <p>14 answer either and we'll allow the Applicant to</p> <p>15 answer that question when he, he returns.</p> <p>16 Any other comment?</p> <p>17 MR. JACOB BROSSART: That's all for</p> <p>18 now.</p> <p>19 MR. GAUSTAD: Okay. Thank you.</p> <p>20 Rodney Brossart, do you have any</p> <p>21 comment regarding the project?</p> <p>22 I see you're present.</p> <p>23 MR. RODNEY BROSSART: Not at this</p> <p>24 time.</p> <p>25 MR. GAUSTAD: Okay, very good,</p>	<p style="text-align: right;">36</p> <p>1 MS. SUSAN BROSSART: No.</p> <p>2 MR. GAUSTAD: Okay.</p> <p>3 Allan Anderson, --</p> <p>4 MR. ANDERSON: Yeah.</p> <p>5 MR. GAUSTAD: -- I see you're here.</p> <p>6 MR. ANDERSON: Yep.</p> <p>7 MR. GAUSTAD: Do you have any</p> <p>8 comments?</p> <p>9 MR. ANDERSON: Just that I do agree</p> <p>10 that we should save the road, it's the only</p> <p>11 road that we got that goes through the whole</p> <p>12 county, north and south. So I'm in favor of</p> <p>13 getting the water off the road.</p> <p>14 MR. GAUSTAD: Okay. Thank you.</p> <p>15 Elroy Knauer?</p> <p>16 MR. ANDERSON: He's not here.</p> <p>17 MR. GAUSTAD: Did I pronounce that</p> <p>18 right?</p> <p>19 MR. VARNSON: Knauer.</p> <p>20 MR. GAUSTAD: K-n -- K-n-a-u-e-r,</p> <p>21 correct?</p> <p>22 He's not present?</p> <p>23 No. Okay.</p> <p>24 Lynn Estvold?</p> <p>25 Not present.</p>

<p style="text-align: center;">37</p> <p>1 Philip Janney or Kay F. Guon?</p> <p>2 Not present.</p> <p>3 How about Robyn Jacobsen or Vicki</p> <p>4 Cookman?</p> <p>5 Any one of them present?</p> <p>6 I see we've got somebody from the</p> <p>7 U.S. Fish & Wildlife Service here.</p> <p>8 MR. VOSE: Yes.</p> <p>9 MR. GAUSTAD: Do you have any</p> <p>10 comments regarding the project?</p> <p>11 MR. VOSE: Yeah. Brian Vose.</p> <p>12 I was just curious, they said</p> <p>13 three-quarter -- three-fourths of the project</p> <p>14 is done. Could you point on the map of what's</p> <p>15 not done?</p> <p>16 Or just --</p> <p>17 MR. GAUSTAD: And --</p> <p>18 MR. VOSE: With a highlighter?</p> <p>19 MR. GAUSTAD: -- you'll have to</p> <p>20 just -- and maybe -- can we get a copy of this</p> <p>21 map?</p> <p>22 MR. HERMAN: Absolutely.</p> <p>23 MR. GAUSTAD: Okay. And --</p> <p>24 MR. HERMAN: It's --</p> <p>25 MR. GAUSTAD: -- is that --</p>	<p style="text-align: center;">39</p> <p>1 MR. JOHNSON: There's -- those two</p> <p>2 wetlands aren't in.</p> <p>3 MR. HERMAN: Okay.</p> <p>4 MR. JOHNSON: That one.</p> <p>5 And then the one west of you.</p> <p>6 MR. HERMAN: Yep.</p> <p>7 MR. JOHNSON: That one.</p> <p>8 MR. HERMAN: Okay.</p> <p>9 MR. JOHNSON: They're not in.</p> <p>10 MR. HERMAN: And then I know --</p> <p>11 MR. JOHNSON: And the very end of</p> <p>12 that, very end of the green there isn't in.</p> <p>13 MR. HERMAN: Yep. That's the</p> <p>14 elevation that we're going to be setting to</p> <p>15 the, to the outlet elevation once determined.</p> <p>16 And this channel is all, all</p> <p>17 currently constructed, as is this.</p> <p>18 And this along County Road 22.</p> <p>19 MR. GAUSTAD: So basically all of</p> <p>20 County Road 22 is completed?</p> <p>21 MR. JOHNSON: No.</p> <p>22 MR. HERMAN: No, the, the pipes</p> <p>23 between the channels are not in yet.</p> <p>24 MR. GAUSTAD: The open channels are</p> <p>25 completed, but the pipes that have to be</p>
<p style="text-align: center;">38</p> <p>1 MR. HERMAN: -- in digital form.</p> <p>2 MR. GAUSTAD: That's fine.</p> <p>3 MR. HERMAN: Okay.</p> <p>4 MR. VARNSON: You had one earlier</p> <p>5 that showed the additional red line. A</p> <p>6 previous slide?</p> <p>7 MR. HERMAN: Previous line?</p> <p>8 MR. GAUSTAD: Either that or you're</p> <p>9 going to have to describe, as best you --</p> <p>10 MR. HERMAN: Okay.</p> <p>11 MR. GAUSTAD: -- can, where the</p> <p>12 project is completed and what's not completed.</p> <p>13 MR. HERMAN: So I, I may ask the</p> <p>14 contractor to, to correct me if I'm incorrect</p> <p>15 on this because my information may be a little</p> <p>16 old at this point.</p> <p>17 But downstream here, basically</p> <p>18 everything in green is already in.</p> <p>19 And this is all along that township</p> <p>20 road.</p> <p>21 MR. GAUSTAD: The east-west</p> <p>22 township road?</p> <p>23 MR. HERMAN: Yep.</p> <p>24 There is a section in here that is</p> <p>25 red, I believe this is also in place, correct?</p>	<p style="text-align: center;">40</p> <p>1 installed are not?</p> <p>2 MR. HERMAN: Correct.</p> <p>3 MR. GAUSTAD: Okay.</p> <p>4 And anything, --</p> <p>5 MR. HERMAN: I believe --</p> <p>6 MR. GAUSTAD: -- and anything</p> <p>7 around the township road that affects a wetland</p> <p>8 hasn't been done; would that be fair?</p> <p>9 MR. JOHNSON: Yep.</p> <p>10 MR. HERMAN: Yeah.</p> <p>11 MR. GAUSTAD: Okay. And your name</p> <p>12 again is?</p> <p>13 MR. VOSE: Brian.</p> <p>14 MR. JOHNSON: Brian Johnson.</p> <p>15 MR. GAUSTAD: No.</p> <p>16 Brian Johnson?</p> <p>17 MR. JOHNSON: Yep.</p> <p>18 MR. GAUSTAD: Thank you.</p> <p>19 Can you --</p> <p>20 MR. VOSE: And this project is</p> <p>21 going to provide 10 inches of relief or -- and</p> <p>22 is permanent?</p> <p>23 MR. HERMAN: We, we assume 10</p> <p>24 inches of relief as permanent -- or I -- is it</p> <p>25 my turn?</p>

<p style="text-align: center;">41</p> <p>1 MR. GAUSTAD: Yeah, --</p> <p>2 MR. HERMAN: Okay.</p> <p>3 MR. GAUSTAD: -- go ahead.</p> <p>4 MR. HERMAN: Sorry I jumped in</p> <p>5 there.</p> <p>6 And that -- but that number is</p> <p>7 based on this primary outlet.</p> <p>8 That will change if this secondary</p> <p>9 outlet is significantly different.</p> <p>10 MR. VOSE: And then that'll give --</p> <p>11 MR. HERMAN: Or the difference of</p> <p>12 a --</p> <p>13 MR. VOSE: -- the road how much</p> <p>14 freeboard? Will it give it 2 feet, 2 and a</p> <p>15 half feet? 10 inches?</p> <p>16 MR. HERMAN: So 10, 10 inches gives</p> <p>17 us approximately, what was it, 1.8 feet.</p> <p>18 Yeah, so a little, a little under 2</p> <p>19 feet of freeboard.</p> <p>20 And that is calculated from</p> <p>21 centerline, not from the shoulder.</p> <p>22 MR. VOSE: Okay.</p> <p>23 MR. HERMAN: So our effective, our</p> <p>24 effective freeboard is probably in that 18-inch</p> <p>25 range.</p>	<p style="text-align: center;">43</p> <p>1 the Brossarts, if they, if they can.</p> <p>2 And Jacob Brossart had a couple of</p> <p>3 questions, as did Susan Brossart. If you could</p> <p>4 respond to them, that would be great.</p> <p>5 MR. HERMAN: Absolutely.</p> <p>6 So the, the question of, does</p> <p>7 downstream analysis include road crossing</p> <p>8 analysis.</p> <p>9 My assumption would be, yes, it</p> <p>10 does, because item number two on the North</p> <p>11 Dakota Administrative Code says, adverse</p> <p>12 effects that may occur to downstream</p> <p>13 landowners. This factor is limited to the</p> <p>14 project's hydrologic effects, such as erosion,</p> <p>15 flood duration, sustained flow impacts and</p> <p>16 downstream water control devices or device</p> <p>17 operation impact.</p> <p>18 So my interpretation or assumption</p> <p>19 in, in that is that, yes, we would be</p> <p>20 considering any adverse effects to downstream</p> <p>21 culverts, road, low water road crossing, that</p> <p>22 sort of, that sort of thing.</p> <p>23 MR. GAUSTAD: And what would you do</p> <p>24 then if there was a, a, a --</p> <p>25 MR. HERMAN: We --</p>
<p style="text-align: center;">42</p> <p>1 MR. GAUSTAD: Anything else?</p> <p>2 MR. VOSE: That's all I have.</p> <p>3 MR. GAUSTAD: Okay.</p> <p>4 There may be others that are</p> <p>5 present here that have not, didn't get a</p> <p>6 specific letter, that are here because of the</p> <p>7 Notice, the publication Notice.</p> <p>8 Tom Anderson?</p> <p>9 MR. ANDERSON: Yeah.</p> <p>10 MR. GAUSTAD: Okay. Go ahead.</p> <p>11 MR. ANDERSON: Yeah, I'm just, I'm</p> <p>12 just here, I live, I live on that road and we</p> <p>13 just, we've got to get that water off, it's,</p> <p>14 it's too dangerous for everybody, so --</p> <p>15 MR. GAUSTAD: Okay.</p> <p>16 MR. ANDERSON: If we can just get</p> <p>17 the water down to save the road, that's all we</p> <p>18 care about.</p> <p>19 MR. GAUSTAD: Okay. Thank you.</p> <p>20 Anybody else that's present that I</p> <p>21 have not specifically named that wants to</p> <p>22 present any comment regarding the project?</p> <p>23 All right. Hearing none, I am</p> <p>24 going to ask the, the Applicant, the KLJ</p> <p>25 representatives, to respond to the comments by</p>	<p style="text-align: center;">44</p> <p>1 MR. GAUSTAD: -- finding or --</p> <p>2 MR. HERMAN: We would, we would</p> <p>3 mitigate that in the engineering design.</p> <p>4 MR. GAUSTAD: Okay.</p> <p>5 MR. BJORNSON: Can -- I guess is</p> <p>6 this -- can I add to that? That's --</p> <p>7 MR. GAUSTAD: Your name is?</p> <p>8 MR. BJORNSON: Paul, Paul Bjornson,</p> <p>9 with KLJ.</p> <p>10 MR. GAUSTAD: Okay.</p> <p>11 MR. BJORNSON: I, I don't</p> <p>12 anticipate that that would include sizing those</p> <p>13 or -- to the --</p> <p>14 MR. HERMAN: And to the --</p> <p>15 MR. BJORNSON: It would not be a</p> <p>16 crossing standard on those to the public -- the</p> <p>17 Century Code, it would just be whether or not</p> <p>18 we're affecting them.</p> <p>19 MR. GAUSTAD: Okay. All right.</p> <p>20 MR. HERMAN: Okay. And the second</p> <p>21 question that I'd written down here was a</p> <p>22 question on the road inslopes.</p> <p>23 I -- the, the ditch slope adja --</p> <p>24 adjacent to the road.</p> <p>25 And the permit application does</p>

<p style="text-align: center;">45</p> <p>1 actually specify that as a 3:1 and -- if I 2 remember correctly. 3 Let me, quick, verify that. 4 Yes, a side slope of 3:1, with a 5 bottom width of 3 feet. 6 So that would be pursuant to County 7 standards, as, as they have already adopted for 8 the rest of the County system. 9 And that is -- that will be applied 10 to both the county road and the township roads 11 heading east and west. 12 The upstream effect question. I'm 13 not entirely certain what, what the, what the 14 question is, is asking; however, if you're 15 asking what are the upstream impacts within 16 this specific drainage basin, yes, we are 17 looking at that, of course, because it, it's a 18 contributing factor to how much water is coming 19 our way. 20 If you're asking how much -- or 21 what the drainage impact would be to the drain 22 that we are draining into, and that would be 23 this primary channel heading up north, crossing 24 U.S. 2 between Lakota and Mapes, and stretching 25 all the way down to Stump Lake, no, we don't</p>	<p style="text-align: center;">47</p> <p>1 drainage channel that you claim has immense 2 capacity. 3 MR. HERMAN: I -- 4 MR. RODNEY BROSSART: That coulee. 5 MR. HERMAN: Okay. I guess I 6 would, I would filter back to our item number 7 two that we have to consider and that's 8 downstream impacts. 9 If we have downst -- if we have no 10 downstream impacts, we wouldn't have upstream 11 either. 12 MR. GAUSTAD: Any further comment? 13 MR. BJORNSON: Can I add, 14 supplement that a little bit, too? 15 This is Paul Bjornson again. 16 We're setting the in -- inlet 17 elevations of the culvert network to be the 18 same as what it would be if we did a clean-out 19 on the natural outlet, which it wouldn't even 20 really need to permit. 21 MR. HERMAN: Yeah. 22 MR. GAUSTAD: Understood. 23 Any further comment, Mr. Brossart? 24 MR. RODNEY BROSSART: Yes. Are you 25 saying that what's already out there, as far as</p>
<p style="text-align: center;">46</p> <p>1 have anything that we would be looking at for 2 upstream impacts to that because we shouldn't 3 have any. At least not that we would assume at 4 all. 5 If we have any impacts upstream, we 6 will certainly have impacts downstream, which 7 is our mandate to, to mitigate or to analyze 8 and, and mitigate, so -- 9 Hopefully that answers your 10 questions properly. If there's anything 11 additional, let me know. 12 MR. GAUSTAD: Do you have any 13 further comment, Jacob Brossart? 14 MR. JACOB BROSSART: No. 15 MR. GAUSTAD: Rodney Brossart, any 16 further comment? 17 MR. RODNEY BROSSART: Yeah. What 18 does that mean, upstream? Is that work all 19 done already or what? 20 MR. HERMAN: Well, that's what I'm 21 trying to figure out, what you mean by 22 upstream? 23 MR. RODNEY BROSSART: Well, it's -- 24 MR. HERMAN: Upstream of what? 25 MR. RODNEY BROSSART: Of this whole</p>	<p style="text-align: center;">48</p> <p>1 rock crossing, you're just going to raise them? 2 MR. GAUSTAD: Can you answer that 3 question? 4 MR. RODNEY BROSSART: Or are you -- 5 MR. HERMAN: Not likely. We would 6 mitigate any issues in the engineering design. 7 MR. RODNEY BROSSART: So how do we 8 get across it? 9 MR. HERMAN: Again, that would be 10 part of the having no downstream impacts. 11 MR. VARNSON: Have him locate that 12 spot for us. 13 MR. GAUSTAD: And you -- which, 14 which location are you referring to? Do you 15 have a description? 16 MR. RODNEY BROSSART: Well, there's 17 more than one. 18 MR. GAUSTAD: Where are they? 19 MR. RODNEY BROSSART: They're all 20 downstream. 21 MR. GAUSTAD: Where? 22 MR. JACOB BROSSART: There's -- 23 MR. RODNEY BROSSART: There's 24 County Road 4, there's -- between Section, I 25 think it is 25 and 36.</p>

<p style="text-align: center;">49</p> <p>1 They're between 36 and Section 1, I</p> <p>2 believe it is, in Wamduska.</p> <p>3 That section.</p> <p>4 MR. GAUSTAD: Okay.</p> <p>5 MR. RODNEY BROSSART: Water's all</p> <p>6 backed up.</p> <p>7 So I think we need to get some</p> <p>8 studies.</p> <p>9 MR. GAUSTAD: Okay. Can you</p> <p>10 respond to that?</p> <p>11 MR. HERMAN: I guess my response</p> <p>12 would be the same as before, is item number two</p> <p>13 basically tells us that we need to consider</p> <p>14 those downstream effects and make sure that</p> <p>15 they're minimum.</p> <p>16 MR. GAUSTAD: Okay.</p> <p>17 MR. BJORNSON: And that they're --</p> <p>18 I -- this is Paul Bjornson again.</p> <p>19 And it's unlikely that those would</p> <p>20 be significant, because the cleaned-out</p> <p>21 elevation of the channel is following the</p> <p>22 natural outlets, would have a much higher</p> <p>23 capacity than the 18-inch culvert going into</p> <p>24 it.</p> <p>25 MR. HERMAN: Yeah.</p>	<p style="text-align: center;">51</p> <p>1 going to get these studies?</p> <p>2 MR. GAUSTAD: I don't know.</p> <p>3 I suspect if it's provided to the,</p> <p>4 to the Nelson County Water Board, which I</p> <p>5 suspect it would be, that that certainly can be</p> <p>6 made available.</p> <p>7 Any other comments, Mr. Brossart?</p> <p>8 MR. RODNEY BROSSART: I guess not.</p> <p>9 I mean, --</p> <p>10 MR. GAUSTAD: Okay.</p> <p>11 MR. RODNEY BROSSART: -- if you</p> <p>12 don't --</p> <p>13 MR. GAUSTAD: Thank you.</p> <p>14 MR. RODNEY BROSSART: -- have any</p> <p>15 studies, I guess what more is there to say?</p> <p>16 MR. GAUSTAD: Okay.</p> <p>17 Ms. Brossart, do you have anything</p> <p>18 further?</p> <p>19 MS. SUSAN BROSSART: No.</p> <p>20 MR. GAUSTAD: Okay. Thank you.</p> <p>21 Turn it right back to the Applicant</p> <p>22 for any further comment from any rebuttal of or</p> <p>23 further comment about what anybody has said</p> <p>24 here today.</p> <p>25 Do you have anything else?</p>
<p style="text-align: center;">50</p> <p>1 MR. BJORNSON: That would drain the</p> <p>2 same area.</p> <p>3 So the -- it would have less than,</p> <p>4 of an affect than doing the clean-out.</p> <p>5 MR. RODNEY BROSSART: So what</p> <p>6 you're saying is is you, you need to get this</p> <p>7 study done before you can actually do anything?</p> <p>8 MR. HERMAN: Correct, at this</p> <p>9 point.</p> <p>10 MR. BJORNSON: Yeah.</p> <p>11 MR. HERMAN: That study is in</p> <p>12 progress.</p> <p>13 MR. GAUSTAD: And you're, the study</p> <p>14 you're referring to is to address the State</p> <p>15 Engineer's 3D volume evaluation, correct?</p> <p>16 MR. HERMAN: And the remainder of</p> <p>17 these analysis questions, yes.</p> <p>18 MR. GAUSTAD: Okay. As a result</p> <p>19 of that --</p> <p>20 MR. HERMAN: Yeah.</p> <p>21 MR. GAUSTAD: -- 3D evaluation?</p> <p>22 MR. HERMAN: Yep.</p> <p>23 MR. GAUSTAD: Okay.</p> <p>24 Anything else, Mr. Brossart?</p> <p>25 MR. RODNEY BROSSART: Are, are we</p>	<p style="text-align: center;">52</p> <p>1 MR. HERMAN: I think that concludes</p> <p>2 the questions that were brought up and the</p> <p>3 concerns that I've marked down.</p> <p>4 At this point, like I said</p> <p>5 previously, we are pending that additional</p> <p>6 study to, to establish the, or re-establish the</p> <p>7 outlet elevation which will dictate the rest of</p> <p>8 our answers to these questions.</p> <p>9 MR. GAUSTAD: Okay. And I probably</p> <p>10 should have asked the county commissioners,</p> <p>11 too, if they had any comments or they wanted to</p> <p>12 interject anything.</p> <p>13 MR. ELLERTSON: We feel it's a</p> <p>14 worthy project.</p> <p>15 MR. GAUSTAD: Okay. And your name</p> <p>16 is?</p> <p>17 MR. ELLERTSON: Bruce Ellertson.</p> <p>18 MR. GAUSTAD: Bruce Ellertson?</p> <p>19 MR. ELLERTSON: Right.</p> <p>20 MR. GAUSTAD: Okay. Thank you.</p> <p>21 All right. With that, we'll</p> <p>22 conclude the hearing. Thank you for all</p> <p>23 coming.</p> <p>24 Oh, I've got to make a couple of</p> <p>25 announcements first, before everybody leaves,</p>

<p style="text-align: center;">53</p> <p>1 by regulation.</p> <p>2 First, if the Board denies the</p> <p>3 permit, that'll be, that constitutes a final</p> <p>4 denial.</p> <p>5 Appeals must be taken to the</p> <p>6 District Court within 30 days.</p> <p>7 Second, a Board-approved</p> <p>8 Application will be forwarded to the State</p> <p>9 Engineer.</p> <p>10 Third, those who wish to be</p> <p>11 notified of the Board's decision must provide</p> <p>12 their names and addresses in writing to the</p> <p>13 Board at the end of the meeting.</p> <p>14 Fourth, the Board must send Notice</p> <p>15 and a copy of the Board's determination and</p> <p>16 rationale to all parties of record, anyone who</p> <p>17 is requested in writing to be notified and the</p> <p>18 State Engineer.</p> <p>19 Has everybody signed the sign-in</p> <p>20 sheet?</p> <p>21 Somebody have that?</p> <p>22 MS. VARNSON: It's right</p> <p>23 (indicating) here.</p> <p>24 MR. GAUSTAD: So I can get that</p> <p>25 back?</p>	<p style="text-align: center;">55</p> <p style="text-align: center;">REPORTER'S CERTIFICATE</p> <p>1</p> <p>2</p> <p>3 I, Joy Filipski, a general shorthand</p> <p>4 (Stenograph) reporter, 2100 South Columbia</p> <p>5 Road, Suite 204, Grand Forks, North Dakota, do</p> <p>6 hereby certify that the foregoing 54 pages of</p> <p>7 typewritten material constitutes a full, true</p> <p>8 and correct transcript of my original</p> <p>9 Stenograph notes, as they purport to contain,</p> <p>10 of the transcript of the proceedings reported</p> <p>11 by me at the time and place hereinbefore</p> <p>12 mentioned.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 Joy Filipski</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Dated this 21st day of November, 2019.</p> <p>24</p> <p>25</p>
<p style="text-align: center;">54</p> <p>1 Oh, you've got it.</p> <p>2 We'll mark that as --</p> <p>3 This'll be Exhibit 11 for today's</p> <p>4 hearing.</p> <p>5 With that, if those that, with</p> <p>6 respect to the announcement that want to get,</p> <p>7 be notified, if you want to come up and we'll</p> <p>8 have a, another sign-in sheet here</p> <p>9 (indicating), a yellow pad of paper, just write</p> <p>10 your name and address and -- so I can send the,</p> <p>11 the determination to you.</p> <p>12 Thank you very much for attending,</p> <p>13 have a great day.</p> <p>14 (Whereupon, the proceedings were</p> <p>15 concluded at 11:25 o'clock a.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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September 6, 2019

Mr. Ben Varnson, Chairman
Nelson County Water Resource District
P.O. Box 446
Lakota, ND 58344

RE: Surface Drain Permit Application No. 5254

Dear Mr. Varnson:

The Office of the State Engineer (OSE) has reviewed Application for Surface Drain No. 5254 (Application), submitted by Nelson County Commission for a proposed surface drain, locally known as County Road 22 Drain (Project). The Project is to be located in the W ½ of Section 16, N ½ of Section 20, and the NE ¼ of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County.

Upon review, the OSE has determined that the **proposed drainage under this Application is drainage of statewide or interdistrict significance** (see technical memorandum enclosed). Therefore, the OSE is forwarding the Application to the Nelson County Water Resource District (District) to process according to North Dakota Administrative Code (N.D.A.C.) § 89-02-01-09.1.

As required under N.D.A.C. § 89-02-01-09.1(1)(f), the District must evaluate the application based upon the factors in N.D.A.C. § 89-02-01-09 (enclosed). If the District approves the Application, the OSE will evaluate the Application based upon these same factors.

In the event the Application is approved by the District, the OSE has determined more information will be necessary for the OSE to properly evaluate the Application under N.D.A.C. § 89-02-01-09.4. Specifically, the Applicant will need to provide the OSE a scientific analysis as evidence to determine how much sediment has been deposited along and within the natural outlet of the slough complex that is impacting County Road 22. If a technical report is prepared and provided, such as one prepared by a soil scientist, the OSE will be able to adequately review and compare the Project with the natural outlet's maintained condition.

The OSE will not issue a permit if the District's or OSE's evaluation of the Application and Project yields:

- Additional watershed area contributing to Devils or Stump Lakes
- Additional water being drained below the natural outlet of the slough complex

Mr. Ben Varnson
Page 2 of 2
September 5, 2019

Please contact Brian Mager at 701-328-3442 or bmager@nd.gov if you have any questions concerning this correspondence.

Sincerely,



Garland Erbele, P.E.
State Engineer

GE:BRM:pdh/2112




Enclosures

cc: NRCS State Office (Electronic)
NRCS – Cavalier (Electronic)
USACE Regulatory Office (Electronic)
Nelson County Commission
Nelson County Highway Department

TECHNICAL MEMORANDUM

DATE: **September 3, 2019**

TO:  Garland Erbele, P.E., State Engineer

FROM:  John Paczkowski, P.E., Assistant State Engineer
 Aaron Carranza, P.E., Director, Regulatory Division
 Matt Lindsay, P.E., Manager, Engineering and Permitting Section
 Brian Mager, P.E., Water Resource Engineer

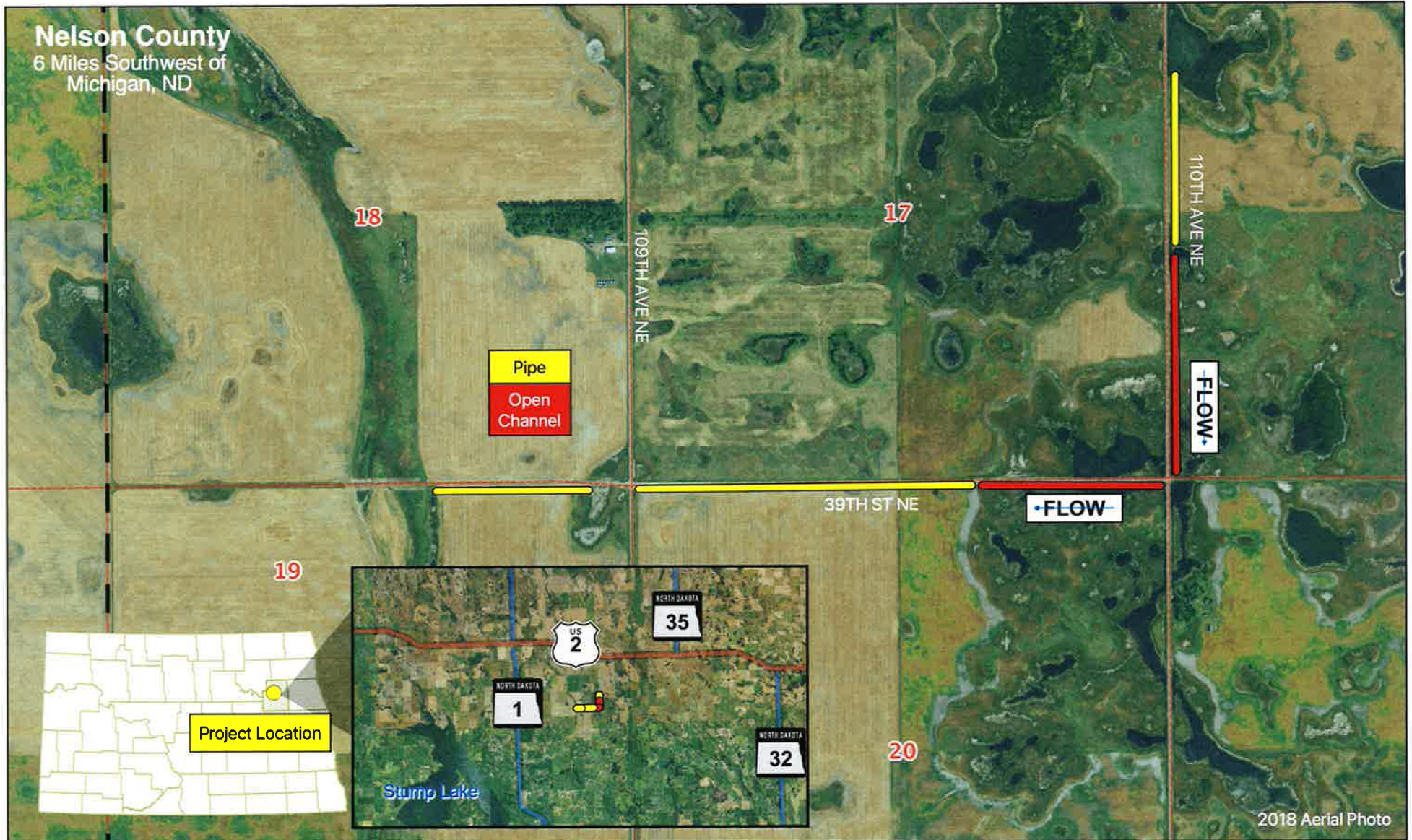
SUBJECT: **Application for Surface Drain No. 5254 – Nelson County Highway 22 Drain**

On December 10, 2018, the Office of the State Engineer (OSE) received Application for Surface Drain No. 5254 (Application), from the Nelson County Commission (Applicant), a proposed surface drain. The drain is locally known as the Nelson County Highway 22 Drain Project (Project) and is located in W ½ of Section 16, NE ¼ of Section 19, and N ½ of Section 20, Township 152 North, Range 59 West, Williams Township, Nelson County.

According to the Application, the purpose of the proposed drainage is to provide flood relief and structural integrity for County Highway 22. The proposed Project is designed to provide an alternate outlet alignment for a slough complex that is impacting Highway 22. The Applicant claims that the natural outlet to this slough complex has silted in beyond its natural outlet. The realigned alternate outlet would drain by gravity through a combination of open channel and buried pipe. The proposed length of the entire Drain is 11,000 linear feet with a 6,000-foot portion of the total length being constructed of 18-inch double walled pipe. Open channel cuts are designed to have a 0% grade, 3-foot bottom width, and 4:1 side slopes. To remain within the road right-of-way, deep cuts through existing grade will incorporate the 18-inch buried pipe at a grade of 0.05 percent slope (see map for alignment and material callouts). The Project outlets into a tributary of Stump Lake located in the NE ¼ of Section 19, Williams Township.

According to North Dakota Century Code (N.D.C.C.) § 61-32-03, a permit to drain is required “before draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising of eighty acres or more.” Based on the Application materials submitted, the OSE has determined that the proposed Application will drain a watershed area of 80 acres or more. Therefore, a surface drain permit is required for the proposed Application. The OSE staff determined that the Application was located in the Stump Lake Watershed, a watershed within the Devils Lake Basin. According to a July 25, 1995 letter from the State Engineer, “all drainage applications received for projects within the Devils Lake Basin will be, until further notice, of statewide significance.” Therefore, **I recommend the State Engineer determine the Application to be of Statewide Significance.**

Nelson County
6 Miles Southwest of
Michigan, ND



Drain Permit Application No. 5254
Nelson County Commission

W 1/2 Section 16, NE 1/4 Section 19, N 1/2 Section 20,
T152N, R59W, Nelson County

Drain



Date: 3/7/2019
Prepared by: CWN

DWR Exhibit 4

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November 13, 2019

Ben Varnson Chairman
Nelson County Water Resource District
104 East B Avenue
Lakota, ND 58344-0046

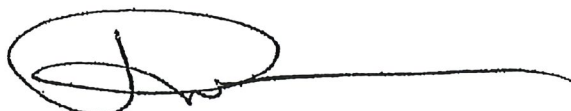
RE: Statewide or Interdistrict Significance Drain Application #5254 [County Road 22 Drain]

Dear Chairman Varnson:

The North Dakota Department of Environmental Quality, Division of Water Quality (department) appreciates the opportunity to comment on the proposed County Road 22 Drain. In brief, the drain must not cause an exceedance of the numeric water quality standard or violate the antidegradation policy as outlined in N.D.A.C. § 33.1-16-02.1 (water quality standards).

If you have any questions or need assistance, please contact Peter Wax at 701-328-5268 or pwax@nd.gov.

Sincerely,



Peter N. Wax
Environmental Scientist
Division of Water Quality

PNW:dlp

xc: Bruce Ellertson, Nelson County Commission, Chairman, Lakota, ND.
Aaron Carranza, PE, State Water Commission
Bruce Kreft, NDG&F

EXHIBIT

tabbies

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Director's Office
701-328-5150

Division of
Air Quality
701-328-5188

Division of
Municipal Facilities
701-328-5211

Division of
Waste Management
701-328-5166

Division of
Water Quality
701-328-5210

Division of Chemistry
701-328-6140
2635 East Main Ave
Bismarck ND 58501

Cty 22 Drain 64

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NOV 13 2019

PEARSON CHRISTENSEN, PLLP
 LAW FIRM

November 7, 2019

Daniel Gaustad
 Pearson Christensen, PLLP
 24 North 4th Street
 PO Box 5758
 Grand Forks, ND 58206-5758

Re: Project Code: File: 90534.004, Nelson County Road 22 Project in Nelson County

Dear Mr. Gaustad:

The North Dakota Department of Environmental Quality has reviewed the information concerning the above-referenced project received at the department on October 30, 2019, with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have the following comments:

1. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.
2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction are attached.
3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.
4. All solid waste materials must be managed and transported in accordance with the state's solid and hazardous waste rules. Appropriate efforts to reduce, reuse and/or recycle waste materials are strongly encouraged. As appropriate, segregation of inert waste from non-inert waste can generally reduce the cost of waste management. Further information on waste management and recycling is available from the department's Division of Waste Management at (701) 328-5166.

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Daniel Gaustad

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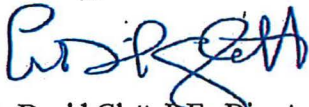
November 7, 2019

These comments are based on the information provided about the project in the above-referenced submittal. The U.S. Army Corps of Engineers may require a water quality certification from this department for the project if the project is subject to their Section 404 permitting process. Any additional information which may be required by the U.S. Army Corps of Engineers under the process will be considered by this department in our determination regarding the issuance of such a certification.

The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. In addition, we believe the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. David Glatt", is written over the typed name.

L. David Glatt, P.E., Director
North Dakota Department of Environmental Quality

LDG:dlp
Attach.

Construction and Environmental Disturbance Requirements

The following are the minimum requirements of the North Dakota Department of Environmental Quality for projects that involve construction or environmental disturbance in or near waters of the State of North Dakota. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect waters of the state. All projects must be constructed to minimize the loss of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of soil and sediment loss using erosion and sediment controls. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, and land resources must be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction must be managed to minimize impacts to aquatic systems. Follow safe storage and handling procedures to prevent the contamination of water from fuel spills, lubricants, and chemicals. Stream bank and stream bed disturbances must be controlled to minimize silt movement, nutrient upsurges, plant dislocations, and any physical, chemicals, or biological disruption. The use of pesticides or herbicides in or near surface waters is allowed under the department's pesticide application permit with notification to the department.

Fill Material

Any fill material placed below the ordinary high-water mark must be free of topsoil, decomposable materials, and persistent synthetic organic compounds; including, but not limited to, asphalt, tires, treated lumber, and construction debris. The department may require testing of fill materials. All temporary fill must be removed. Debris and solid wastes must be properly disposed or recycled. Impacted areas must be restored to near original condition.